

1 BRIAN S. KABATECK, SBN 152054  
2 (bsk@kbklawyers.com)  
3 RICHARD L. KELLNER, SBN 171416  
4 (rlk@kbklawyers.com)  
5 ALFREDO TORRIJOS, SBN 222458  
6 (at@kbklawyers.com)  
KABATECK BROWN KELLNER LLP  
644 South Figueroa Street  
Los Angeles, California 90017  
Telephone: (213) 217-5000  
Facsimile: (213) 217-5010

7 Attorneys for Plaintiff  
David Almeida

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

11 DAVID ALMEIDA, individually and  
12 on behalf of all others similarly  
situated.

**Plaintiff.**

vs.

16 GOOGLE, INC., a Delaware  
17 Corporation; and DOES 1 through 10,  
inclusive,

### Defendants.

CASE NO. CV 08-02088 RMW  
HON RONALD M WHYTE

**DECLARATION OF MICHAEL V.  
STORTI IN SUPPORT OF  
PLAINTIFF'S MOTION FOR  
LEAVE TO FILE A FIRST  
AMENDED COMPLAINT AND TO  
SET NEW CASE MANAGEMENT  
CONFERENCE**

Hearing  
Date: October 30, 2009  
Time: 9:00 a.m.  
Courtroom: 6

**DECLARATION OF MICHAEL V. STORTI**

23 I, Michael V. Storti, declare as follows:

24       1. I am over the age of 18 and a resident of California. I make this  
25 declaration of my personal and first-hand knowledge, and, if called and sworn as a  
26 witness, I would and could testify competently hereto.

**DECLARATION OF MICHAEL V. STORTI IN SUPPORT OF PLAINTIFF'S MOTION FOR LEAVE TO  
FILE A FIRST AMENDED COMPLAINT AND TO SET NEW CASE MANAGEMENT CONFERENCE  
(CV 08-02088 RMW)**

1       2. I am an attorney admitted to practice in the state California. I am an  
2 associate at the law firm of Kabateck Brown Kellner LLP and I am one of the  
3 attorneys representing plaintiff David Almeida (“Plaintiff”) in this action.

4       3. Attached hereto as Exhibit “A” is a true and correct copy of the  
5 proposed First Amended Complaint.

6       4. Attached hereto as Exhibit “B” is a true and correct copy of the  
7 original complaint filed in this action on April 22, 2008.

8       5. Plaintiff served his First Set of Interrogatories and First Set of  
9 Requests for Production of Documents on October 6, 2008.

10      6. Attached hereto as Exhibit “C” is a true and correct copy of the Case  
11 Management Order signed by the Court on October 10, 2008.

12      7. Attached hereto as Exhibit “D” is a true and correct copy of  
13 Defendant Google’s Objections and Responses to Plaintiff’s First Set of  
14 Interrogatories, served on December 5, 2008.

15      8. Attached hereto as Exhibit “E” is a true and correct copy of Defendant  
16 Google’s Responses to Plaintiff’s First Set of Requests for Production of  
17 Documents, served on December 5, 2008.

18      9. Attached hereto as Exhibit “F” is a true and correct copy of a meet  
19 and confer letter sent to Google’s counsel, David Silbert, dated January 16, 2009.

20      10. Attached hereto as Exhibit “G” is a true and correct copy of a meet  
21 and confer letter sent to Google’s counsel, David Silbert, dated February 2, 2009.

22      11. Attached hereto as Exhibit “H” is a true and correct copy of a letter  
23 from Mr. Silbert, dated February 18, 2009.

24      12. Attached hereto as Exhibit “I” is a true and correct copy of the Case  
25 Management Order signed by the Court on April 2, 2009.

26      13. On June 5, 2009, I spoke with Mr. Silbert and informed him that  
27 Plaintiff wished to file an amended complaint, substituting Largo Cargo Co. as

1 class representative. I asked if Google would stipulate to the amendment. Mr.  
2 Silbert stated that he would confer with his client inform me when a decision was  
3 made.

4       14. On June 18, 2009, I spoke with Mr. Silbert who informed me that  
5 Google would not stipulate to a dismissal. He stated that Plaintiff signed up before  
6 Google began using the CPC content bid input box alleged in the complaint. He  
7 stated that the case *Lierboe v. State Farm Mut. Auto Ins. Co.*, 350 F.3d 1018 (9th  
8 Cir. 2003), required dismissal of the action.

9           15. None of the documents produced by Google substantiate Google's  
10 response to Plaintiff's Interrogatory No. 2.

11 16. Plaintiff has not yet taken a 30(b)(6) deposition of Google.

12        17. Attached hereto as Exhibit "J" is a true and correct copy of an email  
13 from Mr. Silbert, dated May 8, 2009. The attachment to the email was the  
14 verification to Google's interrogatory responses that were served five months  
15 earlier.

16        18. On June 18, 2009, Plaintiff agreed to dismiss the action if Google  
17 would stipulate to a dismissal. Attached hereto as Exhibit "K" is a true and correct  
18 copy of an email from Mr. Silbert, dated June 18, 2009.

19       19. Attached hereto as exhibit "L" is a true and correct copy of an email  
20 from Mr. Silbert, dated August 13, 2009.

21       20. Attached hereto as Exhibit "M" is a true and correct copy of an email  
22 chain between Mr. Silbert and myself. The first email, to Mr. Silbert, is dated  
23 August 25, 2009. Mr. Silbert's response is dated August 26, 2009.

24 I declare under penalty of perjury that the foregoing is true and correct,  
25 executed on September 11, 2009 in Los Angeles, California.

/s/

Michael V. Storti

**EXHIBIT A**

1 BRIAN S. KABATECK, SBN 152054  
2 (bsk@kbklawyers.com)  
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Facsimile: (213) 217-5010

7 Attorneys for Plaintiff  
David LargoCargo.Com

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

LARGO CARGO CO., a Florida corporation, individually and on behalf of all others similarly situated,

CASE NO. CV 08-02088 RMW  
HON. RONALD M. WHYTE

15 Plaintiff.

## **FIRST AMENDED CLASS ACTION COMPLAINT**

18 GOOGLE, INC., a Delaware  
19 Corporation; and DOES 1 through 10,  
inclusive,

## **JURY TRIAL DEMANDED**

## Defendants.

24 Plaintiff Largo Cargo Co. (“Plaintiff”), individually and on behalf of the  
25 class described below, by its attorneys, make the following allegations pursuant to  
26 the investigation of its counsel and based upon information and belief except as to  
27 allegations specifically pertaining to Plaintiff and its counsel, which are based on  
28 personal knowledge. Plaintiff brings this action for damages and injunctive relief

1 against Defendant, demanding a trial by jury.

2                   **NATURE OF THE ACTION**

3       1. Plaintiff brings this class action against defendant Google, Inc.  
4 (“Google”) to recover damages and other relief available at law and in equity on  
5 behalf of itself as well as on behalf of the members of the following class:

6                   *All persons or entities located within the United States  
7                   who bid on a keyword though AdWords, left the “CPC  
8                   content bid” input blank, and were charged for content  
9                   ads.*

10      2. This action arises from Google’s deceptive, fraudulent, and unfair  
11 practice of tricking advertisers who seek online advertising through Google’s  
12 AdWords program into bidding for a service that they do not want.

13      3. Google is commonly thought simply as an Internet search engine; in  
14 fact, Google’s business is online advertising. Google’s business model is primarily  
15 dependent on linking individuals who are searching the internet with advertisers  
16 who pay Google (and others) for each time the linkage occurs. The Google  
17 Network is the largest online advertising network in the United States.

18      4. AdWords is Google’s primary advertising program and is the main  
19 source of its revenue. Through AdWords, Google permits would-be advertisers to  
20 bid on words or phrases that will trigger the advertisers’ ads. AdWords is  
21 premised on a pay-per-click (“PPC”) model, meaning that the advertisers pay only  
22 when their ads are clicked. As part of the AdWords bidding process, therefore,  
23 advertisers must set a maximum cost per click (“CPC”) bid that the advertiser is  
24 willing to pay each time someone clicks on its ad. When an advertiser is choosing  
25 its CPC bid, it is also given the “option” of entering a separate bid for clicks  
26 originating from Google’s “content network” which consists of sites that are not  
27 search engines. These content network sites are those that use AdSense, the other  
28 side of the Google advertising model.

1       5. This action arises from the fact that Google does not inform it  
2 advertisers that if they leave the CPC content bid input blank, Google will use the  
3 advertiser's CPC bid for clicks occurring on the content network. Google does this  
4 despite the fact that ads placed on the content network are demonstrably inferior to  
5 ads appearing on search result pages. Because there is no option to opt out of  
6 content ads during the AdWords registration process, advertisers reasonably  
7 believe that by leaving the CPC content bid input blank they can opt out of having  
8 their ads placed on the content network. Google, however, has charged and  
9 continues to charge those advertisers who leave the CPC content bid input blank  
10 for content ads on third party websites.

## PARTIES

12       6. Plaintiff Largo Cargo Co. is a Florida corporation and has previously  
13 registered for an AdWords account as more particularly described herein and has  
14 also previously been charged for content ads as more particularly described herein.

15       7. Plaintiff is informed and believes and thereon alleges that defendant  
16 Google Inc. is a Delaware Corporation doing business in the state of California.  
17 Plaintiff is informed and believes and thereon alleges that there is no one state  
18 where Google conducts a substantial predominance of its business, making its  
19 principal place of business the state where it is headquartered. Google's principal  
20 campus and corporate headquarters are located in 1600 Amphitheatre Parkway,  
21 Mountain View, California.

22       8. Plaintiff does not know the true names or capacities of the persons or  
23 entities sued herein as DOES 1 to 10, inclusive, and therefore sues such defendants  
24 by such fictitious names. Plaintiff is informed and believes and thereon alleges  
25 that each of the DOE defendants is in some manner legally responsible for the  
26 damages suffered by Plaintiffs and the members of the class as alleged herein.  
27 Plaintiff will amend this complaint to set forth the true names and capacities of  
28 these defendants when they have been ascertained, along with appropriate charging

1 allegations, as may be necessary.

2 **JURISDICTION AND VENUE**

3 9. This Court has original jurisdiction over this action pursuant to 28  
4 U.S.C. § 1332(d)(2) in that it is a class action filed under rule 23 of the Federal  
5 Rules of Civil Procedure, the matter in controversy, as aggregated pursuant to 28  
6 U.S.C. § 1332(d)(6) exceeds the sum of \$5,000,000 exclusive of interest and costs,  
7 and a substantial number of members of the class of plaintiffs are citizens of a state  
8 different from that of defendant Google.

9 10. Venue is proper in the Northern District of California pursuant to 28  
10 U.S.C. § 1391(a) in that: (1) Google resides in this judicial district; (2) a substantial  
11 part of the events or omissions giving rise to the claims asserted herein occurred in  
12 this judicial district; and (3) Google is subject to personal jurisdiction in the  
13 Northern District of California.

14 **FACTUAL BACKGROUND**

15 11. Google offers advertisers two types of ads. The first is the search ad.  
16 When an Internet user uses Google to search for a specific term or term, Google  
17 will display the ads of advertisers who have bid for those particular keywords. The  
18 second type of ad is the contextual based ad, or content ad. These ads are shown  
19 on third party websites that have content that matches the keywords bid on by the  
20 advertiser. For example, an ad for a hardware store may be shown on a website  
21 that has content about home improvement projects.

22 12. In order to advertise with Google, advertisers must register with  
23 AdWords, Google's advertising program. The process of registering with  
24 AdWords involves an online process that begins by clicking on the "Advertising  
25 Programs" link on Google's homepage. After selecting to register with AdWords  
26 and the desired version, the advertiser moves to the initial step of the sign-up  
27 process. First, the advertiser selects the target language and geographic location.  
28 Then, the advertiser creates the ad that will be placed on Google's website or on

third party websites and selects the desired keywords. The advertiser then selects the maximum daily budget and the maximum CPC bid. Here, the advertiser has two choices, the “Default CPC bid” and the “CPC content bid”. Next to the “CPC content bid” input is the word “optional”.

5        13. Nowhere on this page, or anywhere in the registration process is there  
6 the option to opt-out of content ads.

7        14. Advertisers who do not want to pay for ads placed on third party  
8 websites therefore leave the “CPC content bid” input blank, believing that the word  
9 “optional” means that having content ads placed on third party websites is optional.

10        15. Google, however, fails to inform that an advertiser who leaves this  
11 “optional” input blank will nonetheless be charged for third party content ads. By  
12 redefining the universally understood meaning of an input form left blank, and then  
13 intentionally concealing this redefinition, Google has fraudulently taken millions  
14 of dollars from Plaintiff and the members of the class.

15        16. Plaintiff enrolled in AdWords in January of 2008. Plaintiff set the  
16 desired bids for it's ads, and, not wanting to pay for ads placed on third part  
17 content sites, left the CPC content bid input blank. Plaintiff, like any reasonable  
18 consumer, expected that leaving an input blank would indicate that it did not want  
19 to bid on content ads. This expectation was supported by the fact that Plaintiff was  
20 not given the option of opting out of content bids during the advertising campaign  
21 creation process.

22        17. Despite leaving the CPC content bid input blank, Google charged  
23 Plaintiff over \$10,000 for unwanted third party content ads.

## **CLASS ALLEGATIONS**

25       18. Description of the Class: Plaintiff brings this nationwide class action  
26 on behalf of himself and the Class defined as follows:

27           *All persons or entities located within the United States*  
28           *who bid on a keyword though AdWords, left the “CPC*

1           *content bid” input blank, and were charged for content*  
 2           *ads.*

3       19. Excluded from the Class are governmental entities, Defendant, any  
 4 entity in which Defendant has a controlling interest, and Defendant’s officers,  
 5 directors, affiliates, legal representatives, employees, co-conspirators, successors,  
 6 subsidiaries, and assigns. Also excluded from the Class is any judge, justice, or  
 7 judicial officer presiding over this matter and the members of their immediate  
 8 families and judicial staff.

9       20. Plaintiff reserves the right to modify the class description and the  
 10 class period based on the results of discovery.

11       21. Numerosity: The proposed Class is so numerous that individual  
 12 joinder of all its members is impracticable. Due to the nature of the trade and  
 13 commerce involved, however, Plaintiff believes that the total number of class  
 14 members is at least in the hundreds of thousands and that the members of the Class  
 15 are numerous and geographically dispersed across the United States. While the  
 16 exact number and identities of class members are unknown at this time, such  
 17 information can be ascertained through appropriate investigation and discovery.  
 18 The disposition of the claims of the class members in a single class action will  
 19 provide substantial benefits to all parties and to the court.

20       22. Common Questions of Law and Fact Predominate: There are many  
 21 questions of law and fact common to the representative Plaintiff and the proposed  
 22 Class, and those questions substantially predominate over any individualized  
 23 questions that may affect individual class members. Common questions of fact  
 24 and law include, but are not limited to, the following:

25       a. Whether Google charges for advertisements placed on third  
 26 party websites when the “optional” CPC content bid input is  
 27 left blank, and whether Google discloses this material fact to  
 28 consumers;

- 1                   b. Whether Google failed to disclose that when the “optional”  
2                   CPC content bid input is left blank, Google will still charge for  
3                   ads placed on third party websites;
- 4                   c. Whether or not Plaintiffs and the members of the class have  
5                   been damaged by the wrongs complained of herein, and if so,  
6                   the measure of those damages and the nature and extent of other  
7                   relief that should be afforded;
- 8                   d. Whether Google engaged in unfair, unlawful and/or fraudulent  
9                   business practices; and
- 10                  e. Whether Goolge failed to disclose material facts about the  
11                   subject Google Adwords program.

12                 23. Typicality: Plaintiff's claims are typical of the claims of the  
13                 members of the Class. Plaintiff and all members of the class have been similarly  
14                 affected by Defendant's common course of conduct since their charged for content  
15                 ads after leaving the “optional” CPC content bid input blank.

16                 24. Adequacy of Representation: Plaintiff will fairly and adequately  
17                 represent and protect the interests of the Class. Plaintiff has retained counsel with  
18                 substantial experience in prosecuting complex and class action litigation. Plaintiff  
19                 and its counsel are committed to vigorously prosecuting this action on behalf of the  
20                 Class, and have the financial resources to do so. Neither Plaintiff nor its counsel  
21                 have any interests adverse to those of the proposed Class.

22                 25. Superiority of a Class Action: Plaintiff and the members of the Class  
23                 have suffered, and will continue to suffer, harm as a result of defendant's unlawful  
24                 and wrongful conduct. A class action is superior to other available methods for the  
25                 fair and efficient adjudication of the present controversy as individual joinder of all  
26                 members of the class is impractical. Even if individual class members had the  
27                 resources to pursue individual litigation, it would be unduly burdensome to the  
28                 courts in which the individual litigation would proceed. Individual litigation

1 magnifies the delay and expense to all parties in the court system of resolving the  
 2 controversies engendered by Defendant's common course of conduct. The class  
 3 action device allows a single court to provide the benefits of unitary adjudication,  
 4 judicial economy, and the fair and equitable handling of all class members' claims  
 5 in a single forum. The conduct of this action as a class action conserves the  
 6 resources of the parties and of the judicial system, and protects the rights of the  
 7 class member. Furthermore, for many, if not most, Class members, a class action  
 8 is the only feasible mechanism that allows therein an opportunity for legal redress  
 9 and justice.

10       26. Adjudication of individual Class members' claims with respect to the  
 11 Defendant would, as a practical matter, be dispositive of the interests of other  
 12 members not parties to the adjudication and could substantially impair or impede  
 13 the ability of other class members to protect their interests.

#### **FIRST CAUSE OF ACTION**

##### **UNJUST ENRICHMENT**

16       27. Plaintiff realleges the preceding paragraphs as if fully set forth herein  
 17 and, to the extent necessary, plead this cause of action in the alternative.

18       28. Through the actions described above, Google has received money  
 19 belonging to Plaintiff and the Class through the fees collected from ads placed on  
 20 third party content sites when a reasonable advertiser would have believed that  
 21 leaving the CPC content bid input blank meant that they would not be charged for  
 22 content ads.

23       29. Additionally, Google has reaped substantial profit by concealing the  
 24 fact when left blank, the "optional" CPC content bid would be set at an amount  
 25 that could reach the amount bid for the search bid. Ultimately, this resulted in  
 26 Google's wrongful receipt of profits and injury to Plaintiff and the Class. Google  
 27 has benefited from the receipt of such money that it would not have received but  
 28 for its concealment.

30. As a direct and proximate result of Google's misconduct as set forth above, Google has been unjustly enriched.

31. Under principles of equity and good conscience, Google should not be permitted to keep the full amount of money belonging to Plaintiff and the Class which Google has unjustly received as a result of its actions.

6 WHEREFORE, Plaintiff and the Class pray for relief as set forth below.

## **SECOND CAUSE OF ACTION**

**VIOLATION OF CALIFORNIA BUSINESS & PROFESSIONS CODE  
SECTIONS 17200 ET SEQ.**

10       32. Plaintiff realleges the preceding paragraphs as if fully set forth herein  
11 and, to the extent necessary, plead this cause of action in the alternative.

12       33. Plaintiff has standing to pursue this claim as Plaintiff has suffered  
13 injury in fact and has lost money or property as a result of Google's actions as  
14 delineated herein.

34. Class members have suffered injury in fact and have lost money or  
property as a result of Google's actions as delineated herein.

17       35. Google's actions as alleged in this complaint constitute an unfair or  
18 deceptive practice within the meaning of California Business and Professions Code  
19 sections 17200 *et seq.* in that Google's actions are unfair, unlawful and fraudulent,  
20 and because Google has made unfair, deceptive, untrue or misleading statements in  
21 advertising media, including the Internet, within the meaning of California  
22 Business and Professions Code sections 17500 *et seq.*

23        36. Google's business practices, as alleged herein, are unfair because they  
24 offend established public policy and/or are immoral, unethical, oppressive,  
25 unscrupulous and/or substantially injurious to consumers in that consumers are not  
26 informed that they will be charged for ad placed on third party websites even  
27 though the "optional" CPC content bid input was left blank.

37. Google's business practices, as alleged herein, are unlawful because the conduct constitutes unjust enrichment, as well as the other causes of action herein alleged.

38. Google's practices, as alleged herein, are fraudulent because they are likely to deceive consumers.

39. Google's wrongful business acts alleged herein constituted, and constitute, a continuing course of conduct of unfair competition since Google is marketing and selling their products in a manner that is likely to deceive the public.

9       40. Google's business acts and practices, as alleged herein, have caused  
10 injury to Plaintiff, the Class and the public.

11       41. Pursuant to section 17203 of the California Business and Professions  
12 Code, Plaintiff and the Class seek an order of this court enjoining Google from  
13 continuing to engage in unlawful, unfair, or deceptive business practices and any  
14 other act prohibited by law, including those acts set forth in the complaint.  
15 Plaintiff and the Class also seek an order requiring Google to make full restitution  
16 of all moneys it wrongfully obtained from Plaintiffs and the class.

17 WHEREFORE, Plaintiff and the class pray for relief as set forth below.

## **PRAYER FOR RELIEF**

20           **WHEREFORE**, Plaintiff and members of the proposed Class request that  
21 the Court enter an order or judgment against Defendant as follows:

1. Certification of the proposed Class and notice thereto to be paid by Defendant;
  2. Adjudge and decree that Defendant has engaged in the conduct alleged herein;
  3. For restitution and disgorgement on certain causes of action;

- 1       4. For an injunction ordering Defendant to cease and desist from
- 2                 engaging in the unfair, unlawful, and/or fraudulent practices alleged in
- 3                 the Complaint;
- 4        5. For compensatory and general damages according to proof on certain
- 5                 causes of action;
- 6        6. For special damages according to proof on certain causes of action;
- 7        7. For both pre and post-judgment interest at the maximum allowable
- 8                 rate on any amounts awarded;
- 9        8. Costs of the proceedings herein;
- 10      9. Reasonable attorneys fees as allowed by statute; and
- 11     10. Any and all such other and further relief that this Court may deem just
- 12                 and proper.

13  
14      Dated: September \_\_\_\_ 2009       **KABATECK BROWN KELLNER LLP**

15  
16  
17      By: \_\_\_\_\_  
18                 BRIAN S. KABATECK  
19                 RICHARD L. KELLNER  
20                 ALFREDO TORRIJOS  
21                 *Attorneys for Plaintiff and proposed Class*

1                   **DEMAND FOR JURY TRIAL**

2                   Plaintiffs hereby demand a trial by jury in the instant action.

3  
4                   Dated: September \_\_\_\_ 2009       **KABATECK BROWN KELLNER LLP**

5  
6  
7                   By: \_\_\_\_\_  
8                   BRIAN S. KABATECK  
9                   RICHARD L. KELLNER  
10                  ALFREDO TORRIJOS  
11                  *Attorneys for Plaintiff and proposed Class*

**EXHIBIT B**

FILED

Federal  
S  
4

1 BRIAN S. KABATECK, SBN 152054  
(bsk@kbklawyers.com)  
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5 Los Angeles, California 90017  
Telephone: (213) 217-5000  
6 Facsimile: (213) 217-5010

2008 APR 22 AM 11:47

ADR RICHARD W. WIEKING  
CLERK  
U.S. DISTRICT COURT  
NO. DIST. OF CA. S.J.

7 Attorneys for Plaintiff  
David Almeida

E-FILING

10 *APR*  
11 UNITED STATES DISTRICT COURT  
12 NORTHERN DISTRICT OF CALIFORNIA

13 DAVID ALMEIDA, individually and on  
behalf of all others similarly situated,

CASE NO. C08 02088 HRL

14 Plaintiff,

CLASS ACTION COMPLAINT

15 vs.

JURY TRIAL DEMANDED

16 GOOGLE, INC., a Delaware  
17 Corporation; and DOES 1 through 10,  
18 inclusive,

19 Defendants.

20  
21  
22 Plaintiff David Almeida ("Plaintiff"), individually and on behalf of the class  
23 described below, by his attorneys, makes the following allegations pursuant to the  
24 investigation of his counsel and based upon information and belief except as to  
25 allegations specifically pertaining to Plaintiff and his counsel, which are based on  
26 personal knowledge. Plaintiff brings this action for damages and injunctive relief against  
27 defendant, demanding a trial by jury.  
28

CLASS ACTION COMPLAINT

## NATURE OF THE ACTION

2       1. Plaintiff brings this class action against Google, Inc. ("Google") to recover  
3 damages and other relief available at law and in equity on behalf of himself as well as on  
4 behalf of the members of the following class:

*All persons or entities located within the United States who bid on a keyword though AdWords, left the "CPC content bid" input blank, and were charged for content ads.*

8       2. This action arises from Google's deceptive, fraudulent and unfair practice  
9 of tricking advertisers who seek on-line advertising through Google's AdWords program  
10 into bidding for a service that they do not want.

11       3. Google is commonly thought simply as an Internet search engine; in fact  
12 Google's business is online advertising. Google's business model is primarily dependent  
13 on linking individuals who are searching the internet with advertisers who pay Google  
14 (and others) for each time the linkage occurs. The Google Network is the largest online  
15 advertising network in the United States.

16        4. AdWords is Google's primary advertising program and is the main source  
17 of its revenue. Through AdWords, Google permits would-be advertisers to bid on words  
18 or phrases that will trigger the advertisers' ads. AdWords is premised on a pay-per-click  
19 ("PPC") model, meaning that advertisers pay only when their ads are clicked. As part of  
20 the AdWords bidding process, therefore, advertisers must set a maximum cost per click  
21 ("CPC") bid that the advertiser is willing to pay each time someone clicks on its ad.  
22 When an advertiser is choosing its CPC bid, it is also given the "option" of entering a  
23 separate bid for clicks originating from Google's "content network" which consists of  
24 sites that are not search engines. These content network sites are those that use AdSense,  
25 the other side of the Google advertising model.

5. This action arises from the fact that Google does not inform its advertisers  
that if they leave the content bid CPC input blank, Google will use the advertiser's CPC  
bid for clicks occurring on the content network. Google does this despite the fact that ads

1 placed on the content network are demonstrably inferior to ads appearing on search result  
2 pages. Because there is no option to opt out of content ads during the AdWords  
3 registration process, advertisers reasonably believe that by leaving the content ad CPC  
4 input blank they can opt out of having their ads placed on the content network. Google,  
5 however, has charged and continues to charge those advertisers who leave content ad  
6 CPC input blank for content ads on third party websites.

7 **PARTIES**

8 6. Plaintiff David Almeida ("Plaintiff") is a resident of Essex County,  
9 Massachusetts and citizen of Massachusetts. Plaintiff has previously registered for an  
10 AdWords account as more particularly described herein and has also previously been  
11 charged for content ads as more particularly described herein.

12 7. Plaintiff is informed and believes and thereon alleges that defendant  
13 Google, Inc. ("Google") is a Delaware Corporation doing business in the state of  
14 California. Plaintiff is informed and believes and thereon alleges that there is no one  
15 state where Google conducts a substantial predominance of its business, making its  
16 principal place of business the state where it is headquartered. Network Solutions'  
17 headquarters – and, thus, its principal place of business – are located at 1600  
18 Amphitheatre Parkway, Mountain View, California. Accordingly, Defendant Google is a  
19 citizen of Delaware and California.

20 8. Plaintiff does not know the true names or capacities of the persons or  
21 entities sued herein as DOES 1 to 10, inclusive, and therefore sues such defendants by  
22 such fictitious names. Plaintiff is informed and believes and thereon alleges that each of  
23 the DOE defendants is in some manner legally responsible for the damages suffered by  
24 Plaintiff and the members of the class as alleged herein. Plaintiff will amend this  
25 complaint to set forth the true names and capacities of these defendants when they have  
26 been ascertained, along with appropriate charging allegations, as may be necessary.  
27  
28

Kabateck Brown Kellner LLP  
644 South Figueroa Street  
Los Angeles, California 90017  
FAX (213) 217-5000

## **JURISDICTION AND VENUE**

2       9. This Court has diversity subject matter jurisdiction over this class action  
3 pursuant to 28 U.S.C. § 1332(d) in that this is a civil action filed under Rule 23 of the  
4 Federal Rules of Civil Procedure and members of the class of Plaintiffs are citizens of a  
5 State different from defendant Google, and the aggregated amount in controversy exceeds  
6 \$5,000,000, exclusive of interest and costs. See 28 U.S.C. § 1332(d)(2), (6).

7       10.     Venue is proper in the Northern District of California pursuant to 28 U.S.C.  
8 § 1391(a) in that: (1) Google resides in this judicial district; (2) a substantial part of the  
9 events or omissions giving rise to the claims asserted herein occurred in this judicial  
10 district; and (3) Google is subject to personal jurisdiction in the Northern District of  
11 California.

## **FACTUAL BACKGROUND**

14        11. Google offers advertisers two types of ads. The first is a search ad. When  
15      an Internet user uses Google to search for a specific term or term, Google will display the  
16      ads of advertisers who have bid for those particular keywords. The second type of ad is  
17      contextual based ads, or content ads. These ads are shown on third party websites that  
18      have content that matches the keywords bid on by the advertiser. For example, an ad for  
19      a hardware store may be shown on a website that has content about home improvement  
20      projects.

21       12. In order to advertise with Google, advertisers must register with AdWords,  
22 Google's advertising program. The process of registering with AdWords involves an  
23 online process that begins by clicking on the "Advertising Programs" link on Google's  
24 homepage. After selecting to register with AdWords and the desired version, the  
25 advertiser moves to the initial step of the sign-up process. First, the advertiser selects the  
26 target language and geographic location. Then, the advertiser creates the ad that will be  
27 placed on Google's website or on third party websites and selects the desired keywords.  
28 The advertiser then selects the maximum daily budget and the maximum CPC bid. Here,

1 the advertiser has two choices, the "Default CPC bid" and the "CPC content bid". Next  
2 to the "CPC content bid" input is the word "optional".

3 12. Nowhere on this page, or anywhere in the registration process, is there the  
4 option to opt-out of content ads.

5 13. Advertisers who do not want to pay for ads placed on third party websites,  
6 therefore leave the "CPC content bid" input blank, reasonably believing that the word  
7 "optional" means that having content ads placed on third party websites is optional.

8 14. Google, however, fails to inform that an advertiser who leaves this  
9 "optional" input blank will nonetheless be charged for third party content ads. By  
10 redefining the universally understood meaning of an input form left blank, and then  
11 intentionally concealing this redefinition, Google has fraudulently taken millions of  
12 dollars from Plaintiff and the members of the class.

13 15. Plaintiff enrolled in AdWords in November 2006. Plaintiff created an  
14 advertising campaign for his private investigation business. Plaintiff set the desired bids  
15 for his ads, and, not wanting to pay for ads placed on third part content sites, left the CPC  
16 content bid input blank. Plaintiff, like any reasonable consumer, expected that leaving an  
17 input blank would indicate that he did not want to bid on content ads. This expectation  
18 was supported by the fact that Plaintiff was not given the option of opting out of content  
19 bids during the advertising campaign creation process.

20 16. Despite leaving the CPC content bid input blank, Google charged Plaintiff  
21 for unwanted third party content ads.

22  
23 **CLASS ALLEGATIONS**

24 13. Description of the Class: Plaintiff brings this nationwide class action on  
25 behalf of himself and the Class defined as follows:

26 *All persons or entities located within the United States  
27 who bid on a keyword though AdWords, left the "CPC  
28 content bid" input blank, and were charged for content ads.*

1           14. Excluded from the Class are governmental entities, Defendant, any entity in  
2 which Defendant has a controlling interest, and Defendant's officers, directors, affiliates,  
3 legal representatives, employees, co-conspirators, successors, subsidiaries, and assigns.  
4 Also excluded from the Class is any judge, justice, or judicial officer presiding over this  
5 matter and the members of their immediate families and judicial staff.

6           15. Plaintiff reserves the right to modify the class description and the class  
7 period based on the results of discovery.

8           16. Numerosity: The proposed Class is so numerous that individual joinder of  
9 all its members is impracticable. Due to the nature of the trade and commerce involved,  
10 however, Plaintiff believes that the total number of class members is at least in the  
11 hundreds of thousands and that the members of the Class are numerous and  
12 geographically dispersed across the United States. While the exact number and identities  
13 of class members are unknown at this time, such information can be ascertained through  
14 appropriate investigation and discovery. The disposition of the claims of the Class  
15 members in a single class action will provide substantial benefits to all parties and to the  
16 court.

17           17. Common Questions of Law and Fact Predominate: There are many  
18 questions of law and fact common to the representative Plaintiff and the proposed Class,  
19 and those questions substantially predominate over any individualized questions that may  
20 affect individual class members. Common questions of fact and law include, but are not  
21 limited to, the following:

- 22           a. Whether Google charges for advertisements placed on third party  
23 websites when the "optional" CPC content bid input is left blank,  
24 and whether Google discloses this material fact to consumers;  
25           b. Whether Google failed to disclose that when the "optional" CPC  
26 content bid input is left blank, Google will still charge for ads placed  
27 on third party websites;

- 1                   c. Whether or not Plaintiff and the members of the Class have been
- 2                   damaged by the wrongs complained of herein, and if so, the measure
- 3                   of those damages and the nature and extent of other relief that should
- 4                   be afforded;
- 5                   d. Whether Google engaged in unfair, unlawful and/or fraudulent
- 6                   business practices; and
- 7                   e. Whether Google failed to disclose material facts about the subject
- 8                   Google Adwords program.

9                   18. Typicality: Plaintiff's claims are typical of the claims of the members of  
10                  the Class. Plaintiff and all members of the Class have been similarly affected by  
11                  Defendant's common course of conduct since they were charged for ads although they  
12                  also left the "optional" CPC content bid blank.

13                  19. Adequacy of Representation: Plaintiff will fairly and adequately represent  
14                  and protect the interests of the Class. Plaintiff has retained counsel with substantial  
15                  experience in prosecuting complex and class action litigation. Plaintiff and his counsel  
16                  are committed to vigorously prosecuting this action on behalf of the Class, and have the  
17                  financial resources to do so. Neither Plaintiff nor his counsel has any interests adverse to  
18                  those of the proposed Class.

19                  20. Superiority of a Class Action: Plaintiff and the members of the Class have  
20                  suffered, and will continue to suffer, harm as a result of Defendant's unlawful and  
21                  wrongful conduct. A class action is superior to other available methods for the fair and  
22                  efficient adjudication of the present controversy as individual joinder of all members of  
23                  the Class is impractical. Even if individual Class members had the resources to pursue  
24                  individual litigation, it would be unduly burdensome to the courts in which the individual  
25                  litigation would proceed. Individual litigation magnifies the delay and expense to all  
26                  parties in the court system of resolving the controversies engendered by Defendant's  
27                  common course of conduct. The class action device allows a single court to provide the  
28                  benefits of unitary adjudication, judicial economy, and the fair and equitable handling of

Kabateck Brown Kellner LLP  
644 South Figueroa Street  
Los Angeles, California 90017  
(213) 217-5000  
FAX (213) 217-3010

1 all class members' claims in a single forum. The conduct of this action as a class action  
2 conserves the resources of the parties and of the judicial system, and protects the rights of  
3 the class member. Furthermore, for many, if not most, Class members, a class action is  
4 the only feasible mechanism that allows an opportunity for legal redress and justice.

5 21. Adjudication of individual Class members' claims with respect to the  
6 Defendant would, as a practical matter, be dispositive of the interests of other members  
7 not parties to the adjudication and could substantially impair or impede the ability of  
8 other Class members to protect their interests.

9

10 **FIRST CAUSE OF ACTION**

11 **UNJUST ENRICHMENT**

12 22. Plaintiff realleges the preceding paragraphs as if fully set forth herein and,  
13 to the extent necessary, pleads this cause of action in the alternative.

14 23. Through the actions described above, Google has received money  
15 belonging to Plaintiff and the Class through the fees collected from ads placed on third  
16 party content sites when a reasonable advertiser would have believed that leaving the  
17 CPC content bid input blank meant that they would not be charged for content ads.

18 24. Additionally, Google has reaped substantial profit by concealing the fact  
19 that when left blank, the "optional" CPC content bid would be set at an amount that could  
20 reach the amount bid for the search bid. Ultimately, this resulted in Google's wrongful  
21 receipt of profits and injury to Plaintiff and the Class. Google has benefited from the  
22 receipt of such money that it would not have received but for its concealment.

23 25. As a direct and proximate result of Google's misconduct as set forth above,  
24 Google has been unjustly enriched.

25 26. Under principles of equity and good conscience, Google should not be  
26 permitted to keep the full amount of money belonging to Plaintiff and the Class which  
27 Google has unjustly received as a result of its actions.

28 WHEREFORE, Plaintiff and the Class pray for relief as set forth below.

Kabateck Brown Kellner LLP  
644 South Flower Street  
Los Angeles, California 90017  
213/277-5000  
FAX 213/277-5010

## **SECOND CAUSE OF ACTION**

## FRAUDULENT CONCEALMENT

4 27. Plaintiff realleges the preceding paragraphs as if fully set forth herein and,  
5 to the extent necessary, pleads this cause of action in the alternative.

6 28. Google knew at all material times that when an advertiser left the  
7 "optional" CPC content bid input blank, that advertiser would still be charged for content  
8 ad placed on third party websites. These facts were not known to Plaintiff and the Class.

9        29. Google had a duty to disclose the above known material facts because it  
10 knew that these material facts were unknown to Plaintiff and the Class, that Google was  
11 in a superior position of knowledge with regard to its own technology, and Google chose  
12 to make certain representations that presented only a part of the true story and misled  
13 consumers about the subject products.

14       30.     Google's knowledge that advertisers would be charged for content ads  
15     placed on third party websites even when they left the "optional" CPC content bid input  
16     blank, combined with Google's knowledge that Plaintiff and the Class relied or relies  
17     upon Google to communicate the true state of facts relating to its AdWords program  
18     creates a legal obligation on Google's part to disclose to Plaintiff and the Class that  
19     leaving the "optional" CPC content bid input blank did not mean that they were not  
20     subject to charges for ads placed on third party websites.

31. Google intentionally concealed and/or suppressed the above facts with the  
intent to defraud Plaintiff and the Class.

21       32. Plaintiff and the Class were unaware of the above facts and would not have  
22       acted as they did if they had known of the concealed material facts.

33. Google's concealment of the above facts has caused damage to Plaintiff and  
the Class in an amount to be shown at trial.

WHEREFORE, Plaintiff and the Class pray for relief as set forth below.

**THIRD CAUSE OF ACTION**  
**VIOLATION OF CALIFORNIA BUSINESS & PROFESSIONS CODE  
SECTIONS 17200 ET SEQ.**

34. Plaintiff realleges the preceding paragraphs as if fully set forth herein and, to the extent necessary, pleads this cause of action in the alternative.

6 35. Plaintiff has standing to pursue this claim as Plaintiff has suffered injury in  
7 fact and have lost money or property as a result of Google's actions as delineated herein.

8| 36. Class members have suffered injury in fact and have lost money or property  
9| as a result of Google's actions as delineated herein.

10       37. Google's actions as alleged in this complaint constitute an unfair or  
11 deceptive practice within the meaning of California Business and Professions Code  
12 sections 17200 *et seq.* in that Google's actions are unfair, unlawful and fraudulent, and  
13 because Google has made unfair, deceptive, untrue or misleading statements in  
14 advertising media, including the Internet, within the meaning of California Business and  
15 Professions Code sections 17500 *et seq.*

16       38. Google's business practices, as alleged herein, are unfair because they  
17 offend established public policy and/or are immoral, unethical, oppressive, unscrupulous  
18 and/or substantially injurious to consumers in that consumers are not informed that they  
19 will be charged for ads placed on third party websites even though the "optional" CPC  
20 content bid input was left blank.

21       39. Google's business practices, as alleged herein, are unlawful because the  
22 conduct constitutes fraudulent concealment, as well as the other causes of action herein  
23 alleged.

40. Google's practices, as alleged herein, are fraudulent because they are likely to deceive consumers.

41. Google's wrongful business acts alleged herein constituted, and constitute, a continuing course of conduct of unfair competition since Google is marketing and selling their products in a manner that is likely to deceive the public.

1       42. Google's business acts and practices, as alleged herein, have caused injury  
2 to Plaintiff, the Class and the public.

3       43. Pursuant to section 17203 of the California Business and Professions Code,  
4 Plaintiffs and the class seek an order of this court enjoining Google from continuing to  
5 engage in unlawful, unfair, or deceptive business practices and any other act prohibited  
6 by law, including those acts set forth in the complaint. Plaintiff and the Class also seek  
7 an order requiring Google to make full restitution of all moneys it wrongfully obtained  
8 from Plaintiff and the Class.

WHEREFORE, Plaintiff and the Class pray for relief as set forth below.

## **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff and members of the proposed Class request that the court enter an order or judgment against Defendant as follows:

1. Certification of the proposed Class and notice thereto to be paid by Defendant;
  2. Adjudge and decree that Defendant has engaged in the conduct alleged herein;
  3. For restitution and disgorgement on certain causes of action;
  4. For an injunction ordering Defendant to cease and desist from engaging in the unfair, unlawful, and/or fraudulent practices alleged in the Complaint;
  5. For compensatory and general damages according to proof on certain causes of action;
  6. For special damages according to proof on certain causes of action;
  7. For both pre and post-judgment interest at the maximum allowable rate on any amounts awarded;
  8. Costs of the proceedings herein;
  9. Reasonable attorneys fees as allowed by statute; and

1           10. Any and all such other and further relief that this Court may deem just and  
2           proper.  
3  
4

Dated: April 22, 2008

KABATECK BROWN & KELLNER, LLP

5           By: 

6           BRIAN S. KABATECK  
7           RICHARD L. KELLNER  
8           ALFREDO TORRIJOS

9           *Attorneys for Plaintiff and proposed class*

10           Kabateck Brown Kellner LLP  
11           564 South Flower Street  
12           Los Angeles, California 90017  
13           (213) 277-5000  
14           FAX (213) 217-5010

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury in the instant action.

Dated: April 22, 2008

KABATECK BROWN & KELLNER, LLP

By:

BRIAN S. KABATECK  
RICHARD L. KELLNER  
ALFREDO TORRIJOS  
*Attorneys for Plaintiff and proposed class*

Kabateck Brown Kellner LLP  
644 South Figueroa Street  
Los Angeles, California 90017  
(213) 217-5000  
FAX (213) 217-5010

**EXHIBIT C**

1 BRIAN S. KABATECK SBN 152054  
2 RICHARD L. KELLNER SBN 171416  
3 ALFREDO TORRIJOS SBN 222458  
4 KABATECK BROWN KELLNER LLP  
5 644 South Figueroa Street  
Los Angeles, California 90017  
Telephone: (213) 217-5000  
Facsimile: (213) 217-5010

6  
7 Attorneys for Plaintiff and the Proposed Class  
DAVID ALMEIDA

8 KEKER & VAN NEST, LLP  
9 DARALYN J. DURIE - #169825  
DAVID J. SILBERT - #173128  
RYAN M. KENT - #220441  
ALYSE BERTENTHAL - #253012  
10 710 Sansome Street  
San Francisco, CA 94111-1704  
Telephone: (415) 391-5400  
Facsimile: (415) 397-7188

11 \*E-FILED - 10/10/08\*

12 Attorneys for Defendant  
13 GOOGLE INC., a Delaware corporation

14

15 UNITED STATES DISTRICT COURT  
16 NORTHERN DISTRICT OF CALIFORNIA  
17 SAN JOSE DIVISION

18  
19 DAVID ALMEIDA, individually and on  
behalf of all others similarly situated,

20 Plaintiff,

Case No. C 08-02088 RMW (PVTx)

21 **[ ] SCHEDULING AND CASE  
MANAGEMENT ORDER**

22 v.

23 GOOGLE, INC., a Delaware corporation; and  
DOES 1 through 10, inclusive,

24 Defendants.

25

26

27

28

Plaintiff David Almeida and defendant Google Inc. came on for a case management conference on August 15, 2008. Having considered the Joint Case Management Statement, the arguments presented by counsel and good cause appearing therefore, the Court hereby orders as follows:

## I. ALTERNATIVE DISPUTE RESOLUTION

The parties have filed a Stipulation and Proposed Order selecting mediation as their preferred ADR process and will complete said mediation process no later than June 9, 2009.

## **II. DISCLOSURES**

Google Inc. will make the disclosures required by Rule 26, Federal Rule of Civil Procedure within thirty days of the case management conference.

### III. DISCOVERY

The parties may pursue all discovery methods available under the Federal Rules of Civil Procedure (including depositions, interrogatories, requests for admission, and requests for production) and will follow the presumptive limits set forth in those Rules, except that the Court orders the limit on depositions made by F.R.Civ.P. 30(a)(2)(A)(i) be changed from a maximum of ten depositions to an equivalent maximum hourly quota of 70 hours to be used at the discretion of each party.

The parties shall abide by the following discovery schedule:

22	November 2, 2009	Non-expert discovery cut-off
23	November 9, 2009	Expert opening reports
24	November 23, 2009	Expert opposition reports
25	December 7, 2009	Expert reply reports
26	December 14, 2009	Expert discovery cut-off

1                   **IV. CLASS CERTIFICATION BRIEFING SCHEDULE**

2                   The following schedule shall apply to Plaintiff's anticipated motion for class  
certification:

4 April 3, 2009	Last day for Plaintiff to file and serve: (1) expert report(s) on class certification; and (2) motion for class certification.
5 May 8, 2009	Last day for Defendant to file and serve: (1) expert report(s) on class certification; and (2) opposition to motion for class certification.
7 May 22, 2009	Last day for Plaintiff to file and serve reply in support of motion for class certification.
8 June 19, 2009	Hearing on motion for class certification.

10                  IT IS SO ORDERED.

12 Dated: 10/10/08

14 By: Ronald M. Whyte  
15 The Honorable Ronald M. Whyte  
16 United States District Court Judge

**EXHIBIT D**

1 KEKER & VAN NEST, LLP  
2 DARALYN J. DURIE - #169825  
3 DAVID J. SILBERT - #173128  
4 ALYSE BERTENTHAL - #253012  
5 REBEKAH PUNAK - #248588  
6 710 Sansome Street  
7 San Francisco, CA 94111-1704  
8 Telephone: (415) 391-5400  
9 Facsimile: (415) 397-7188

10 Attorneys for Defendant  
11 GOOGLE INC., a Delaware corporation

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

DAVID ALMEIDA, individually and on  
behalf of all others similarly situated,

Plaintiff,

v.

GOOGLE, INC., a Delaware corporation; and  
DOES 1 through 10, inclusive,

Defendants.

Case No. C 08-02088 RMW

**DEFENDANT GOOGLE INC.'S  
OBJECTIONS AND RESPONSES TO  
PLAINTIFF'S FIRST SET OF  
INTERROGATORIES**

REQUESTING PARTY: PLAINTIFF DAVID ALMEIDA

RESPONDING PARTY: DEFENDANT GOOGLE, INC.

SET NO.: ONE

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, Defendant Google Inc. ("Google") responds and objects to Plaintiff's First Set of Interrogatories as follows:

### GENERAL OBJECTIONS

Google makes the following General Objections to Plaintiff's First Set of Interrogatories, which apply to each Interrogatory regardless of whether the General Objections are specifically incorporated in the Specific Objections and Responses below:

1. Google objects to the requests to the extent that they seek information that was prepared in anticipation of litigation, constitutes attorney work product, discloses mental impressions, conclusions, opinions or legal theories of any attorney for or other representative of Google, contains privileged attorney-client communications, or is otherwise protected from disclosure by any other privileges, immunities, laws, or rules. Any disclosure of such protected or privileged information is inadvertent and shall not be construed as a waiver of those privileges or protections. Google reserves the right to correct the record with regard to any such inadvertent disclosure.

2. Google objects to Plaintiff's First Set of Interrogatories and the Definitions and Instructions attached thereto to the extent they purport to impose upon Google duties and/or responsibilities greater than those imposed by the Federal Rules of Civil Procedure, the local rules and any orders of the presiding Court, or other applicable law. Google will comply with its obligations under the Rules and the law, which Plaintiff has no authority to increase or alter.

3. Google objects to each request to the extent that it seeks information protected from discovery by the right to privacy or any other applicable privilege, including the right to privacy of third parties, or by Google's obligations under applicable law to protect such confidential information.

4. Google objects to each request to the extent that it seeks the disclosure of confidential, proprietary, or trade-secret information. Google will provide such information only pursuant to an appropriate protective order.

5. Google objects to each request to the extent that it calls for a legal conclusion.

- 1       6.     Google objects to these requests to the extent that they are compound.
- 2       7.     Google objects to each definition, instruction or request to the extent that it seeks
- 3 documents or information (1) not currently in Google's possession, custody, or control; (2) that
- 4 Google cannot locate after a reasonably diligent search; or (3) that refer to persons, entities, or
- 5 events not known to Google. Such instructions, definitions, or requests are objectionable where
- 6 they seek to require more of Google than any obligation imposed by the Federal Rules of Civil
- 7 Procedure; subject Google to unreasonable and undue annoyance, oppression, burden, and
- 8 expense; and/or seek to impose upon Google an obligation to investigate or discover information
- 9 or materials from sources equally accessible to Plaintiffs.
- 10      8.     Google objects to the requests to the extent that they are unduly burdensome,
- 11 overly broad, oppressive, calls for information that is neither relevant to any issue in the above-
- 12 captioned litigation nor reasonably calculated to lead to the discovery of admissible evidence,
- 13 and/or constitutes an abuse of process in view of the cost necessary to investigate and/or identify
- 14 information weighed against Plaintiff's need for such information.
- 15      9.     Google objects to each request, to the extent that it is vague, ambiguous, or
- 16 confusing, by failing to adequately define terms or by failing to describe the documents or
- 17 information sought with reasonable particularity. Google objects to the requests and definitions,
- 18 to the extent that they purport to attribute any special or unusual meaning to any terms or phrases
- 19 on the ground that such enlargement, expansion, or alteration renders such a term or request
- 20 vague, ambiguous, unintelligible, overly broad, unduly burdensome, and/or uncertain.
- 21      10.    Google objects to the requests to the extent that each request is duplicative of
- 22 another request.
- 23      11.    Consistent with Rule 33(d) of the Federal Rules of Civil Procedure, Google
- 24 objects to providing responses to requests that can be derived from documents that have or will
- 25 be produced (when requested in compliance with Rules 26 and 34) and where the burden to
- 26 derive such information is substantially the same for Plaintiff as it is for Google.
- 27      12.    Google objects to the requests to the extent that they seek to restrict the facts,
- 28 witnesses, and evidence on which Google may rely on at trial. By responding and objecting to

1 these interrogatories, Google does not intend to, and does not, limit the evidence on which it may  
2 rely to support its contentions and defenses at trial, or to rebut or impeach contentions,  
3 assertions, and evidence presented by Plaintiffs.

4       13. Google objects to the requests to the extent that they seek information to which  
5 Plaintiff already has access, or information that is publicly available.

6       14. Google objects to the definition of "Google," "You," and "Your," to the extent  
7 that it improperly expands the scope of discovery by seeking information and documents that are  
8 not currently in the possession, custody, or control of Google. Google responds on behalf of  
9 itself and no other person or entity. Google also objects to this definition to the extent the  
10 definition purports to include Google's outside counsel, and to the extent the definition purports  
11 to include "agents," "representatives," "all persons" or "other persons acting or purporting to  
12 act," because those phrases are vague and overbroad. Google also objects to the extent that this  
13 definition purports to include counsel as "agents" of Google.

14       15. Google objects to the definition of "Third Party" to the extent that it improperly  
15 expands the scope of discovery by seeking information and documents that are not currently in  
16 the possession, custody, or control of Google.

17       16. Google objects to the definition of "AdWords Customer" to the extent that it  
18 purports to include the term "established" on the ground that the term "established" is vague,  
19 ambiguous and overbroad. In addition, Google objects to the definition of "AdWords Customer"  
20 as overbroad to the extent it includes customers yet unknown to Google.

21       17. Google further objects to the extent that the requests seek a complete and  
22 exhaustive response regarding any issue in this litigation, before discovery has been completed.  
23 Any responses Google makes to any proper discovery requests by Plaintiffs will remain at all  
24 times subject to additional or different information that discovery or further investigation,  
25 analysis, or recollection may disclose. Accordingly, Google reserves the right to amend or  
26 supplement its objections and responses.

27       18. Google's responses are made based on its understanding and interpretation of  
28 each request. Google reserves the right to supplement its objections and responses should

Plaintiffs subsequently put forth an interpretation of any request that differs from that of Google.

19. Google reserves the right to make any use of, or to introduce at any hearing or trial, information that bears on Google's responses to these requests, but discovered subsequent to Google's responses herein.

20. The responses below shall not be construed as an admission as to the relevance or admissibility of any statement or characterization contained in any request. The fact that Google has answered part or all of any Request is not intended to be, and shall not be construed as, a waiver by Google of any part of any objection to any Request. Google reserves all objections, including without limitation objections as to competency, relevance, materiality, privilege, authenticity, or admissibility.

21. Google reserves the right to object on any ground at any time to such other or supplemental discovery requests as Plaintiffs may propound involving or relating to the same subject matter of these requests.

## **SPECIFIC RESPONSES AND OBJECTIONS**

**INTERROGATORY NO. 1:**

Identify the date when You first permitted AdWords Customers to separately set Content Bids.

**RESPONSE TO INTERROGATORY NO. 1:**

Google incorporates by reference its general objections stated above. Subject to the foregoing objections, and without waiving them, Google responds as follows:

In or around November 2005, Google launched a feature that permitted AdWords advertisers who chose to enable the feature to set a separate CPC Content Bid.

**INTERROGATORY NO. 2:**

Identify the date when You first included a CPC Content Bid Input on the Signup Bidding Page.

**RESPONSE TO INTERROGATORY NO. 2:**

Google incorporates by reference its general objections stated above. Subject to the foregoing objections, and without waiving them, Google responds as follows:

1        In or around October 2007, Google launched an experimental program under which  
 2 some—but not all—AdWords customers viewed a CPC Content Bid Input on the Signup  
 3 Bidding Page.

4 **INTERROGATORY NO. 3:**

5        Identify the number of AdWords Customers within the United States for each month and  
 6 year from the date identified in Interrogatory No. 2 up to and including the present who initiated  
 7 one or more AdWords Campaigns where the AdWords Customer left the CPC Content Bid Input  
 8 blank on the Signup Bidding Page.

9 **RESPONSE TO INTERROGATORY NO. 3:**

10        Google incorporates by reference its general objections stated above. In particular,  
 11 Google objects that this Interrogatory is overly broad and extremely burdensome. Google further  
 12 objects that this Interrogatory calls for confidential, commercially sensitive, proprietary  
 13 information which Google will not disclose without an appropriate protective order. Google is  
 14 willing to meet and confer with Plaintiff about an appropriate response to this Interrogatory.

15 **INTERROGATORY NO. 4:**

16        Identify the number of AdWords Customers within the United States for each month and  
 17 year from the date identified in Interrogatory No. 2 up to and including the present who initiated  
 18 one or more AdWords Campaigns where the AdWords Customer left the CPC Content Bid Input  
 19 blank on the Signup Bidding Page and where the AdWords Customer was charged for clicks that  
 20 those ads received on Content Network sites.

21 **RESPONSE TO INTERROGATORY NO. 4:**

22        Google incorporates by reference its general objections stated above. In particular,  
 23 Google objects that this Interrogatory is overly broad and extremely burdensome. Google further  
 24 objects that this Interrogatory calls for confidential, commercially sensitive, proprietary  
 25 information which Google will not disclose without an appropriate protective order. Google is  
 26 willing to meet and confer with Plaintiff about an appropriate response to this Interrogatory.

27 **INTERROGATORY NO. 5:**

28        Identify the number of AdWords Campaigns for each month and year from the date

1 identified in Interrogatory No. 2 up to and including the present that were initiated by AdWords  
 2 Customers located within the United States and where the AdWords Customer left the CPC  
 3 Content Bid Input blank on the Signup Bidding Page.

4 **RESPONSE TO INTERROGATORY NO. 5:**

5 Google incorporates by reference its general objections stated above. In particular,  
 6 Google objects that this Interrogatory is overly broad and extremely burdensome. Google further  
 7 objects that this Interrogatory seeks information that is not reasonably calculated to lead to  
 8 discovery of admissible evidence. Google further objects that this Interrogatory calls for  
 9 confidential, commercially sensitive, proprietary information which Google will not disclose  
 10 without an appropriate protective order. Google is willing to meet and confer with Plaintiff  
 11 about an appropriate response, if any, to this Interrogatory.

12 **INTERROGATORY NO. 6:**

13 Identify the total amount charged to AdWords Customers within the United States for  
 14 each month and year from the date identified in Interrogatory No. 2 up to and including the  
 15 present for clicks that AdWords ads received on Content Network sites where the AdWords  
 16 Customer left the CPC Content Bid Input blank for those ads.

17 **RESPONSE TO INTERROGATORY NO. 6:**

18 Google incorporates by reference its general objections stated above. In particular,  
 19 Google objects that this Interrogatory is overly broad and extremely burdensome. Google further  
 20 objects that this Interrogatory calls for confidential, commercially sensitive, proprietary  
 21 information which Google will not disclose without an appropriate protective order. Google is  
 22 willing to meet and confer with Plaintiff about an appropriate response to this Interrogatory.

23 **INTERROGATORY NO. 7:**

24 Identify the number of AdWords Customers within the United States for each month and  
 25 year from the date identified in Interrogatory No. 2 up to and including the present who initiated  
 26 one or more AdWords Campaigns where the AdWords Customer set the CPC Content Bid Input  
 27 on the Signup Bidding Page to zero.

28

1           **RESPONSE TO INTERROGATORY NO. 7:**

2           Google incorporates by reference its general objections stated above. Subject to the  
 3 foregoing objections, and without waiving them, Google responds as follows:

4           If an Adwords customer attempted to set the CPC Content Bid Input on the Signup  
 5 Bidding Page to zero, he received a message instructing him to set the bid to a value greater than  
 6 zero.

7           **INTERROGATORY NO. 8:**

8           Identify the number of AdWords Customers for each month and year from the date  
 9 identified in Interrogatory No. 2 up to and including the present who changed their Content  
 10 Network bid to zero or opted out of the Content Network after being charged for clicks that  
 11 AdWords ads received on Content Network sites where the AdWords Customer left the CPC  
 12 Content Bid Input blank on the Signup Bidding Page.

13           **RESPONSE TO INTERROGATORY NO. 8:**

14           Google incorporates by reference its general objections stated above. In particular,  
 15 Google objects that this Interrogatory is overly broad and extremely burdensome. Google further  
 16 objects that this Interrogatory calls for confidential, commercially sensitive, proprietary  
 17 information which Google will not disclose without an appropriate protective order. Google is  
 18 willing to meet and confer with Plaintiff about an appropriate response to this Interrogatory.

19           **INTERROGATORY NO. 9:**

20           Identify and describe the procedure or procedures, as they existed during the month of  
 21 November 2006, by which You set the Content Bid and the cost-per-click charged to AdWords  
 22 Customers for clicks to AdWords ads placed on the Content Network when the AdWords  
 23 Customer had left the CPC Content Bid Input blank.

24           **RESPONSE TO INTERROGATORY NO. 9:**

25           Google incorporates by reference its general objections stated above. In particular,  
 26 Google objects that this Interrogatory is not reasonably calculated to lead to discovery of  
 27 admissible evidence, since it asks about procedures that were in place during a specific period  
 28 (the month of November 2006) that is before the CPC Content Bid Input appeared on the Signup

1 Bidding Page, which is the subject of Plaintiff's Complaint.

2 **INTERROGATORY NO. 10:**

3 Identify any and all changes made to the procedure or procedures identified in  
 4 Interrogatory No. 9, and the date(s) when these changes were implemented, regardless of  
 5 whether those changes occurred prior to or subsequent to November 2006.

6 **RESPONSE TO INTERROGATORY NO. 10:**

7 Google incorporates by reference its general objections stated above. In particular,  
 8 Google objects that this Interrogatory is overly broad and not reasonably calculated to lead to  
 9 discovery of admissible evidence to the extent it asks about procedures that were in place before  
 10 the CPC Content Bid Input appeared on the Signup Bidding Page. Subject to the foregoing  
 11 objections, and without waiving them, Google responds as follows:

12 Since October 2007, if an AdWords customer did not set a specific content bid for ads  
 13 running on the content network, his bid was set to "Auto" by default. Auto bids are based on an  
 14 average of all keyword cost-per-click ("CPC") bids, including default ad group CPCs and  
 15 individual keyword CPCs, for the ad group. The customer can change this automatic bid, or opt  
 16 out of the content network altogether, at any time. To determine the cost-per-click charged,  
 17 Google uses data available to it to discount the cost of content network clicks based on their  
 18 effectiveness compared to a search click. Thus, for example, if Google's data shows that a click  
 19 from a content page is less likely to turn into actionable business results—such as online sales,  
 20 registrations, phone calls, or newsletter signups—it reduces the price that the customer pays for  
 21 that click.

22 **INTERROGATORY NO. 11:**

23 Identify and describe the procedure or procedures, if any, as they existed during the  
 24 month of November 2006, by which AdWords Customers could opt-out during the Advertising  
 25 Campaign Creation Process from having AdWords ads placed on the Content Network.

26 **RESPONSE TO INTERROGATORY NO. 11:**

27 Google incorporates by reference its general objections stated above. In particular,  
 28 Google objects that this Interrogatory is not reasonably calculated to lead to discovery of

1 admissible evidence, since it asks about procedures that were in place during a specific period  
 2 (the month of November 2006) that is before the CPC Content Bid Input appeared on the Signup  
 3 Bidding Page, which is the subject of Plaintiff's Complaint.

4 **INTERROGATORY NO. 12:**

5 Identify and describe any and all changes made to the procedure or procedures identified  
 6 in Interrogatory No. 11, and the date(s) when these changes were implemented, regardless of  
 7 whether those changes occurred prior to or subsequent to November 2006.

8 **RESPONSE TO INTERROGATORY NO. 12:**

9 Google incorporates by reference its general objections stated above. In particular,  
 10 Google objects that this Interrogatory is overly broad and not reasonably calculated to lead to  
 11 discovery of admissible evidence to the extent it asks about procedures that were in place before  
 12 the CPC Content Bid Input appeared on the Signup Bidding Page. Subject to the foregoing  
 13 objections, and without waiving them, Google responds as follows:

14 At all relevant times, AdWords customers have been free to turn the content network  
 15 "off" by following simple and clear procedures after an ad campaign has been created, but  
 16 generally not during the Advertising Campaign Creation Process itself. In some contexts,  
 17 however, the customer could do so during the Campaign Creation Process such as when an  
 18 advertiser created a new campaign that matched the settings of an existing campaign, where the  
 19 content network was turned "off" in the existing campaign. In addition, for a small number of  
 20 current advertisers involved in a beta test, the initial campaign creation and the choice of  
 21 settings, including the option to opt out of the content network, appear on the same page.

22 **INTERROGATORY NO. 13:**

23 Identify and describe any procedure or procedures, if any, by which You track complaints  
 24 from and/or provide refunds to AdWords Customers who were charged for clicks to AdWords  
 25 ads placed on the Content Network but who left the CPC Content Bid Input blank.

26 **RESPONSE TO INTERROGATORY NO. 13:**

27 Google incorporates by reference its general objections stated above. In particular,  
 28 Google objects to this Interrogatory as compound, since it calls for answers to multiple discrete

1 questions or subparts. Google further objects to this Interrogatory to the extent that it seeks  
 2 information protected by the attorney-client privilege and/or work product doctrine. Google also  
 3 objects to this Interrogatory as overly broad to the extent it seeks information about procedures  
 4 in place before the CPC Content Bid Input appeared on the Signup Bidding Page, which is the  
 5 subject of Plaintiff's Complaint. Subject to the foregoing objections, and without waiving them,  
 6 Google responds as follows:

7       Google tracks certain advertising-related contacts in a database that *may* contain emails  
 8 (which may or may not be "complaints") from customers who were charged for clicks on the  
 9 content network after they left the CPC Content Bid Input on the Signup Bidding Page blank.  
 10 Other contacts about that subject, including, for example, any telephonic contacts, may or may  
 11 not be tracked. When requests for refunds are received, they are evaluated on a case-by-case  
 12 basis.

13

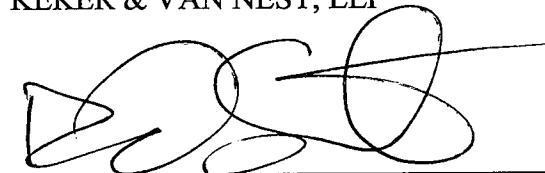
14 Dated: December 5, 2008

KEKER &amp; VAN NEST, LLP

15

16

By:



DAVID J. SILBERT  
 Attorneys for Defendant  
 GOOGLE, INC., a Delaware corporation

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28

1 PROOF OF SERVICE  
2

3 I am employed in the City and County of San Francisco, State of California in the office of a  
 4 member of the bar of this court at whose direction the following service was made. I am over the  
 5 age of eighteen years and not a party to the within action. My business address is Keker & Van  
 6 Nest, LLP, 710 Sansome Street, San Francisco, California 94111.

7 On December 5, 2008, I served the following document(s):  
8

9 **DEFENDANT GOOGLE, INC.'S OBJECTIONS AND RESPONSES TO  
10 PLAINTIFF'S FIRST SET OF INTERROGATORIES**

11 by **E-MAIL VIA PDF FILE**, by transmitting on this date via e-mail a true and correct copy  
 12 scanned into an electronic file in Adobe "pdf" format. The transmission was reported as  
 13 complete and without error  
14

15 and  
16

17 by regular **UNITED STATES MAIL** by placing a true and correct copy in a sealed envelope  
 18 addressed as shown below. I am readily familiar with the practice of Keker & Van Nest, LLP  
 19 for collection and processing of correspondence for mailing. According to that practice, items  
 20 are deposited with the United States Postal Service at San Francisco, California on that same  
 21 day with postage thereon fully prepaid. I am aware that, on motion of the party served, service  
 22 is presumed invalid if the postal cancellation date or the postage meter date is more than one  
 23 day after the date of deposit for mailing stated in this affidavit.  
24

16 Brian S. Kabateck, Esq.  
 17 Richard L. Kellner, Esq.  
 18 Alfredo Torrijos Esq.  
 19 KABATECK BROWN KELLNER, LLP  
 20 644 South Figueroa Street  
 21 Los Angeles, CA 90017  
 22 TEL: (213) 217-5000  
 23 FAX: (213) 217-5010  
 24 EMAIL: [bsk@kbklawyers.com](mailto:bsk@kbklawyers.com)  
 25 EMAIL: [rlk@kbklawyers.com](mailto:rlk@kbklawyers.com)  
 26 EMAIL: [at@kbklawyers.com](mailto:at@kbklawyers.com)

27 Executed on December 5, 2008, at San Francisco, California.  
28

I declare under penalty of perjury under the laws of the State of California that the above is true  
 and correct.  
29

30   
31

32 Lauren Hartz-Lewis  
33

**EXHIBIT E**

1 KEKER & VAN NEST, LLP  
2 DARALYN J. DURIE - #169825  
3 DAVID J. SILBERT - #173128  
4 ALYSE BERTENTHAL - #253012  
5 REBEKAH PUNAK - #248588  
6 710 Sansome Street  
7 San Francisco, CA 94111-1704  
8 Telephone: (415) 391-5400  
9 Facsimile: (415) 397-7188

10 Attorneys for Defendant  
11 GOOGLE INC., a Delaware corporation

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

DAVID ALMEIDA, individually and on  
behalf of all others similarly situated,

Plaintiff,

v.

GOOGLE, INC., a Delaware corporation; and  
DOES 1 through 10, inclusive,

Defendants.

Case No. C 08-02088 RMW

**DEFENDANT GOOGLE INC.'S  
RESPONSES TO PLAINTIFF'S FIRST  
SET OF REQUESTS FOR PRODUCTION  
OF DOCUMENTS**

REQUESTING PARTY: PLAINTIFF DAVID ALMEIDA

RESPONDING PARTY: DEFENDANT GOOGLE, INC.

SET NO.: ONE

1 Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure, Defendant Google  
 2 Inc. ("Google") responds and objects to Plaintiff's First Set of Requests for Production as  
 3 follows:

4 **GENERAL OBJECTIONS**

5 1. Google objects to the requests, definitions and instructions to the extent that they  
 6 seek to impose on Google any obligations exceeding or differing from the requirements of the  
 7 Federal Rules of Civil Procedure, the Local Rules and any orders of the presiding Court, or other  
 8 applicable law. Google will comply with its obligations under the Rules and the law, which  
 9 Plaintiff has no authority to increase or alter.

10 2. Google objects to the definitions, instructions, and requests to the extent that they  
 11 seek information that was prepared in anticipation of litigation, constitutes attorney work  
 12 product, discloses mental impressions, conclusions, opinions or legal theories of any attorney for  
 13 or other representative of Google, contains privileged attorney-client communications, or is  
 14 otherwise protected from disclosure by any other privileges, laws, or rules. Google shall not  
 15 produce such material in response to Plaintiff's requests. Any disclosure of such protected or  
 16 privileged information is inadvertent and shall not be construed as a waiver of any applicable  
 17 privileges or protections. Google reserves the right to correct the record with regard to any such  
 18 inadvertent disclosure.

19 3. Google objects to the instructions, definitions, and requests to the extent that they  
 20 seek documents constituting or containing confidential or proprietary information, trade secrets,  
 21 intellectual property, or commercially sensitive information. To the extent that any such  
 22 documents may be produced, the production will occur only following and pursuant to the entry  
 23 of a suitable confidentiality agreement and only to the extent Google can do so consistent with its  
 24 legal and confidentiality obligations.

25 5. Google objects to each request to the extent that it seeks information protected  
 26 from discovery by any right to privacy or any other applicable privilege, including the right to  
 27 privacy of third parties, or by Google's obligations under applicable law to protect such  
 28 confidential information. To the extent that any such documents may be produced, the

1 production will occur only following and pursuant to the entry of a suitable confidentiality  
 2 agreement and only to the extent Google can do so consistent with its legal and confidentiality  
 3 obligations.

4       6. Google objects to the instructions, definitions, and requests to the extent they seek  
 5 documents constituting or containing information protected from disclosure by any statute, rule,  
 6 or regulation. Google will provide such material in response only to the extent it can do so  
 7 consistent with its legal obligations.

8       7. Google objects to all instructions, definitions and requests to the extent that they  
 9 seek documents or information (1) not currently in Google's possession, custody, or control, or  
 10 (2) that Google cannot locate after a reasonably diligent search. Google also objects to  
 11 Plaintiffs' instructions, definitions, or requests to the extent they seek in any other way to subject  
 12 Google to unreasonable and undue annoyance, oppression, burden, and expense; and/or seek to  
 13 impose upon Google an obligation to investigate or discover information or materials from  
 14 sources equally accessible to Plaintiff.

15       8. Google objects to the definitions, instructions, and requests to the extent they seek  
 16 information readily available through public sources or records, on the grounds that such  
 17 requests unreasonably subject Google to undue burden and expense.

18       9. Google objects to the instructions, definitions, and requests as overly broad,  
 19 unduly burdensome, cumulative and duplicative to the extent that they seek the production of  
 20 "all" and "any" documents of a specified type or nature, when a limited number of such  
 21 documents will provide the requested information. Google also objects to the instructions,  
 22 definitions, and requests as overly broad, vague and ambiguous, and not reasonably calculated to  
 23 lead to the discovery of admissible evidence, to the extent that they seek information regarding  
 24 "any" or "all" persons, entities, objects or events.

25       10. Google objects to the instructions, definitions, and requests to the extent they seek  
 26 electronically stored information that is not reasonably accessible by Google because of undue  
 27 burden or cost (e.g., documents stored on back-up tape or other systems for archival or disaster  
 28 recovery purposes, data residing in hardware buffer memories, deleted files that have not been

1 fully overwritten, replica data resulting from automatic back-up functions, etc.).

2       11. Google objects to the instructions, definitions, and requests to the extent they  
3 require Google to provide Plaintiffs with direct access to Google's computer systems or  
4 hardware, including but not limited to active databases, servers, desktop computers, laptops, hard  
5 drives, PDAs, blackberries, or cell phones.

6       12. Google objects to the requests, definitions, and instructions to the extent that they  
7 seek to restrict the facts, witnesses, and evidence on which Google may rely on at trial. By  
8 responding and objecting to these requests, Google does not intend to, and does not, limit the  
9 evidence on which it may rely to support its contentions and defenses at trial, or to rebut or  
10 impeach contentions, assertions, and evidence presented by Plaintiffs. Furthermore, Google  
11 reserves the right to supplement or amend its responses and objections.

12       13. Googles objects to each request to the extent that it calls for a legal conclusion.

13       14. Google objects to the definitions and instructions to the extent such definitions  
14 and instructions purport to enlarge, expand, or alter in any way the plain meaning and scope of  
15 any specific term or specific requests on the ground that such enlargement, expansion, or  
16 alteration renders the term or request vague, ambiguous, unintelligible, overly broad, unduly  
17 burdensome, and/or uncertain.

18       15. Google objects to the definition of "Google," "You," and "Your," to the extent  
19 that it improperly expands the scope of discovery by seeking information and documents that are  
20 not currently in the possession, custody, or control of Google. Google responds on behalf of  
21 itself and no other person or entity. Google also objects to this definition to the extent the  
22 definition purports to include Google's outside counsel, and to the extent the definition purports  
23 to include "agents," "representatives," "all persons" or "other persons acting or purporting to  
24 act," because those phrases are vague and overbroad. Google also objects to the extent that this  
25 definition purports to include counsel as "agents" of Google.

26       16. Google objects to the definition of "Third Party" to the extent that it improperly  
27 expands the scope of discovery by seeking information and documents that are not currently in  
28 the possession, custody, or control of Google.

1       17. Google objects to the definition of “AdWords Customer” to the extent that it  
2 purports to include the term “established” on the ground that the term “established” is vague,  
3 ambiguous and overbroad. In addition, Google objects to the definition of “AdWords Customer”  
4 as overbroad to the extent it includes customers yet unknown to Google.

5       18. Google objects to the definition of “Document” as vague, overbroad, and unduly  
6 burdensome.

7       19. Google further objects to these requests on the grounds that they are overly broad,  
8 and seek information that is neither relevant to any party’s claim or defense in this litigation, nor  
9 reasonably calculated to lead to the discovery of admissible evidence. To be discoverable,  
10 information must be “relevant to any party’s claim or defense” and at least “reasonably  
11 calculated to lead to the discovery of admissible evidence.” Fed. R. Civ. P. 26(b)(1). For  
12 example, Googles object on this ground to the extent that any request seeks information  
13 regarding time periods during which the CPC Content Input Bid did not appear on the Signup  
14 Bidding Page.

15       20. Google objects to these requests on the grounds that they are overly broad and  
16 vague as to time.

17       21. Google further objects to the extent the requests seek a complete and exhaustive  
18 response or explanation regarding any issue in this litigation, before discovery has been  
19 completed. Any responses Google makes to any proper discovery requests by Plaintiff will  
20 remain at all times subject to additional or different information that discovery or further  
21 investigation, analysis, or recollection may disclose. Accordingly, Google will at all times  
22 reserve the right to amend or supplement its objections and responses.

23       22. Google reserves the right to make any use of, or to introduce at any hearing or  
24 trial, information that is responsive to Plaintiff’s requests, but reviewed, discovered, or  
25 discovered to be relevant subsequent to Google’s responses herein.

26       23. Google’s responses are made based on its understanding and interpretation of  
27 each request. Google reserves the right to supplement its objections and responses should  
28 Plaintiff subsequently put forth an interpretation of any request that differs from those of Google.

24. Google reserves the right to object on any ground at any time to such other or supplemental discovery requests as Plaintiff may propound involving or relating to the same subject matter of these requests.

25. The responses below shall not be construed as an admission as to the relevance or admissibility of any statement or characterization contained in any request. Google reserves all objections, including without limitation objections as to competency, relevance, materiality, privilege, authenticity, or admissibility.

26. The responses below shall not be construed as an admission of or agreement with any implication, statement, characterization or conclusions implied or stated in any instruction, definition, or request.

27. No response to any request below suggests that documents responsive to the request exist.

28. The term "will produce" as used in these responses means that, subject to the general and specific objections set forth herein, Google will produce documents of the types or categories described to the extent that such documents exist and are within Google's possession, custody and/or control. Google's statement that it "will produce" documents should not be construed as a statement or concession that such documents in fact exist.

29. To the extent that pleadings and/or papers filed or served in this action are responsive to these requests and without waiving the right to rely on any such documents for any purposes in this action, Google will not separately produce pleadings and/or papers filed or served in this action in response to discovery requests.

The objections above are incorporated by reference as though fully set forth in each response below. Without waiving any of the foregoing objections, Google responds as follows:

## **SPECIFIC RESPONSES AND OBJECTIONS**

**REQUEST FOR PRODUCTION NO. 1:**

Exemplars of all versions of the form agreement and/or the “AdWords Program Terms” between Google and AdWords Customers.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 1:**

Google incorporates by reference its general objections stated above. In particular, Google objects that the term “the form agreement” is vague and ambiguous; Google interprets this term to be synonymous with its “AdWords Program Terms” for U.S. online customers. Google further objects to this request to the extent it seeks documents from the time period before October 2007 on the basis that the request is overly broad and not reasonably calculated to lead to the discovery of admissible evidence. Subject to the foregoing objections, and without waiving them, Google responds as follows:

Google will produce non-privileged responsive documents in its possession, custody, or control that it identifies after a reasonable search and diligent inquiry, and that have not already been produced, if any exist.

**REQUEST FOR PRODUCTION NO. 2:**

Exemplars of all versions of the Signup Bidding Page.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 2:**

Google incorporates by reference its general objections stated above. In particular, Google objects to this request to the extent it seeks documents from the time period before October 2007 on the basis that the request is overly broad and not reasonably calculated to lead to the discovery of admissible evidence. The request is also unduly burdensome. Subject to the foregoing objections, and without waiving them, Google responds as follows:

Google will produce non-privileged responsive documents in its possession, custody, or control that it identifies after a reasonable search and diligent inquiry, and that have not already been produced, if any exist.

**REQUEST FOR PRODUCTION NO. 3:**

All drafts, mock-ups, documents proposing changes, documents containing drafts [sic] versions, or documents that refer or relate to the design of the Signup Bidding Page.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 3:**

Google incorporates by reference its general objections stated above. In particular, Google objects to this request to the extent it seeks documents relating to the Signup Bidding

1 Page in place before October 2007 on the basis that the request is overly broad and not  
 2 reasonably calculated to lead to the discovery of admissible evidence. The request is also unduly  
 3 burdensome. Google further objects to this request to the extent that it seeks information  
 4 protected by the attorney-client privilege and/or work product doctrine. Google further objects  
 5 on the ground that this request seeks information that is highly confidential, proprietary and/or  
 6 competitively sensitive. Google will produce such information, if at all, only following and  
 7 pursuant to the entry of a suitable confidentiality agreement, and only to the extent Google can  
 8 do so consistent with its legal and confidentiality obligations. Subject to the foregoing  
 9 objections, and without waiving them, Google responds as follows:

10       Google will produce non-privileged responsive documents in its possession, custody, or  
 11 control that it identifies after a reasonable search and diligent inquiry, and that have not already  
 12 been produced, if any exist.

13 **REQUEST FOR PRODUCTION NO. 4:**

14       All documents that refer or relate to the decision to allow AdWords Customers to set a  
 15 Content Bid.

16 **RESPONSE TO REQUEST FOR PRODUCTION NO. 4:**

17       Google incorporates by reference its general objections stated above. In particular,  
 18 Google objects to this request to the extent it seeks documents relating to the setting of a Content  
 19 Bid by means other than through the CPC Content Bid Input on the Signup Bidding Page, on the  
 20 basis that the request is overly broad and not reasonably calculated to lead to the discovery of  
 21 admissible evidence. The request is also unduly burdensome. Google further objects to this  
 22 request to the extent that it seeks information protected by the attorney-client privilege and/or  
 23 work product doctrine. Google further objects on the ground that this request seeks information  
 24 that is highly confidential, proprietary and/or competitively sensitive. Google will produce such  
 25 information, if at all, only following and pursuant to the entry of a suitable confidentiality  
 26 agreement, and only to the extent Google can do so consistent with its legal and confidentiality  
 27 obligations. Subject to the foregoing objections, and without waiving them, Google responds as  
 28 follows:

1        Google will produce non-privileged responsive documents in its possession, custody, or  
 2 control that it identifies after a reasonable search and diligent inquiry, and that have not already  
 3 been produced, if any exist.

4 **REQUEST FOR PRODUCTION NO. 5:**

5        All documents that refer or relate to the decision to present AdWords Customers with the  
 6 CPC Content Bid Input.

7 **RESPONSE TO REQUEST FOR PRODUCTION NO. 5:**

8        Google incorporates by reference its general objections stated above. In particular,  
 9 Google objects to this request to the extent it seeks documents relating to the setting of a Content  
 10 Bid by means other than through the CPC Content Bid Input on the Signup Bidding Page, on the  
 11 basis that the request is overly broad and not reasonably calculated to lead to the discovery of  
 12 admissible evidence. The request is also unduly burdensome. Google further objects to this  
 13 request to the extent that it seeks information protected by the attorney-client privilege and/or  
 14 work product doctrine. Google further objects on the ground that this request seeks information  
 15 that is highly confidential, proprietary and/or competitively sensitive. Google will produce such  
 16 information, if at all, only following and pursuant to the entry of a suitable confidentiality  
 17 agreement, and only to the extent Google can do so consistent with its legal and confidentiality  
 18 obligations. Subject to the foregoing objections, and without waiving them, Google responds as  
 19 follows:

20        Google will produce non-privileged responsive documents in its possession, custody, or  
 21 control that it identifies after a reasonable search and diligent inquiry, and that have not already  
 22 been produced, if any exist.

23 **REQUEST FOR PRODUCTION NO. 6:**

24        All documents that refer or relate to the issuance of refunds or credits in response to  
 25 complaints from AdWords Customers who were charged for clicks to AdWords ads placed on  
 26 the Content Network for ads where the AdWords Customer left the CPC Content Bid Input  
 27 blank.

28

1     **RESPONSE TO REQUEST FOR PRODUCTION NO. 6:**

2                 Google incorporates by reference its general objections stated above. In particular,  
 3 Google objects to this request to the extent it seeks documents relating to the setting of a Content  
 4 Bid by means other than through the CPC Content Bid Input on the Signup Bidding Page, on the  
 5 basis that the request is overly broad and not reasonably calculated to lead to the discovery of  
 6 admissible evidence. The request is also unduly burdensome. Google further objects to this  
 7 request to the extent that it seeks information protected by the attorney-client privilege and/or  
 8 work product doctrine. Google further objects on the ground that this request seeks information  
 9 that is highly confidential, proprietary and/or competitively sensitive. Google will produce such  
 10 information, if at all, only following and pursuant to the entry of a suitable confidentiality  
 11 agreement, and only to the extent Google can do so consistent with its legal and confidentiality  
 12 obligations. Subject to the foregoing objections, and without waiving them, Google responds as  
 13 follows:

14                 Google will produce non-privileged responsive documents in its possession, custody, or  
 15 control that it identifies after a reasonable search and diligent inquiry, and that have not already  
 16 been produced, if any exist.

17     **REQUEST FOR PRODUCTION NO. 7:**

18                 All documents that refer or relate to complaints or inquiries by AdWords Customers  
 19 concerning the use of the CPC Content Bid Input.

20     **RESPONSE TO REQUEST FOR PRODUCTION NO. 7:**

21                 Google incorporates by reference its general objections stated above. In particular,  
 22 Google objects that this request is extraordinarily burdensome. Identifying “all” documents that  
 23 “refer or relate” to complaints or inquiries concerning the use of the CPC Content Bid Input  
 24 would require imprecise and extremely time-consuming searching through vast amounts of data,  
 25 much of it to try to locate documents that are not reasonably calculated to lead to discovery of  
 26 admissible evidence. Google further objects to this request to the extent that it seeks information  
 27 protected by the attorney-client privilege and/or work product doctrine. Google further objects  
 28 on the ground that this request seeks information that is highly confidential, proprietary and/or

1 competitively sensitive. Google will produce such information, if at all, only following and  
 2 pursuant to the entry of a suitable confidentiality agreement, and only to the extent Google can  
 3 do so consistent with its legal and confidentiality obligations. Google is willing to meet and  
 4 confer with Plaintiff about an appropriate search and production of documents, if any, in  
 5 response to this request.

6 **REQUEST FOR PRODUCTION NO. 8:**

7 All documents that refer or relate to complaints or inquiries by AdWords Customers  
 8 concerning charges for clicks to AdWords ads placed on the Content Network where the  
 9 AdWords Customers left the CPC Content Bid Input blank.

10 **RESPONSE TO REQUEST FOR PRODUCTION NO. 8:**

11 Google incorporates by reference its general objections stated above. In particular,  
 12 Google objects that this request is extraordinarily burdensome. Identifying “all” documents that  
 13 “refer or relate” to complaints or inquiries concerning such charges would require imprecise and  
 14 extremely time-consuming searching through vast amounts of data, much of it to try to locate  
 15 documents that are not reasonably calculated to lead to discovery of admissible evidence.  
 16 Google further objects to this request to the extent that it seeks information protected by the  
 17 attorney-client privilege and/or work product doctrine. Google further objects on the ground that  
 18 this request seeks information that is highly confidential, proprietary and/or competitively  
 19 sensitive. Google will produce such information, if at all, only following and pursuant to the  
 20 entry of a suitable confidentiality agreement, and only to the extent Google can do so consistent  
 21 with its legal and confidentiality obligations. Google is willing to meet and confer with Plaintiff  
 22 about an appropriate search and production of documents, if any, in response to this request.

23 **REQUEST FOR PRODUCTION NO. 9:**

24 Exemplars of all versions of invoices sent to AdWords Customers who were charged for  
 25 clicks to AdWords ads placed on the Content Network but who left the CPC Content Bid Input  
 26 blank.

27 **RESPONSE TO REQUEST FOR PRODUCTION NO. 9:**

28 Google incorporates by reference its general objections stated above. In particular,

1 Google objects that the request for "exemplars" of "all" "invoices" sent to such customers is  
 2 vague and ambiguous. Google interprets this request as calling for exemplars showing the  
 3 format of "invoices" sent to such customers, but not any specific "invoices." Google further  
 4 objects to this request to the extent it seeks documents relating to the setting of a Content Bid by  
 5 means other than through the CPC Content Bid Input on the Signup Bidding Page, on the basis  
 6 that the request is overly broad and not reasonably calculated to lead to the discovery of  
 7 admissible evidence. In addition, Google objects to the extent this request seeks information  
 8 protected from discovery by any right to privacy, including the right to privacy of third parties,  
 9 or by Google's obligations under applicable law to protect such confidential information.  
 10 Google will not produce any confidential information of its customers. Subject to the foregoing  
 11 objections, and without waiving them, Google responds as follows:

12       Google will produce non-privileged responsive documents in its possession, custody, or  
 13 control that it identifies after a reasonable search and diligent inquiry, and that have not already  
 14 been produced, if any exist.

15 **REQUEST FOR PRODUCTION NO. 10:**

16       All documents which refer or relate to the placement and/or use of the word "optional"  
 17 next to the CPC Content Bid Input.

18 **RESPONSE TO REQUEST FOR PRODUCTION NO. 10:**

19       Google incorporates by reference its general objections stated above. In particular,  
 20 Google objects to this request to the extent it seeks documents relating to the setting of a Content  
 21 Bid by means other than through the CPC Content Bid Input on the Signup Bidding Page, on the  
 22 basis that the request is overly broad and not reasonably calculated to lead to the discovery of  
 23 admissible evidence. The request is also unduly burdensome. Google further objects to this  
 24 request to the extent that it seeks information protected by the attorney-client privilege and/or  
 25 work product doctrine. Google further objects on the ground that this request seeks information  
 26 that is highly confidential, proprietary and/or competitively sensitive. Google will produce such  
 27 information, if at all, only following and pursuant to the entry of a suitable confidentiality  
 28 agreement, and only to the extent Google can do so consistent with its legal and confidentiality

1 obligations. Subject to the foregoing objections, and without waiving them, Google responds as  
 2 follows:

3 Google will produce non-privileged responsive documents in its possession, custody, or  
 4 control that it identifies after a reasonable search and diligent inquiry, and that have not already  
 5 been produced, if any exist.

6 **REQUEST FOR PRODUCTION NO. 11:**

7 All documents referring or relating to studies, research or discussions comparing the  
 8 effectiveness to AdWords Customers of ads placed on the Search Network versus ads placed on  
 9 the Content Network.

10 **RESPONSE TO REQUEST FOR PRODUCTION NO. 11:**

11 Google incorporates by reference its general objections stated above. In particular,  
 12 Google objects to this request to the extent it seeks documents relating to period before  
 13 November 2007, on the basis that the request is overly broad and not reasonably calculated to  
 14 lead to the discovery of admissible evidence. The request is also unduly burdensome. Google  
 15 further objects to this request to the extent that it seeks information protected by the attorney-  
 16 client privilege and/or work product doctrine. Google further objects on the ground that this  
 17 request seeks information that is highly confidential, proprietary and/or competitively sensitive.  
 18 Google will produce such information, if at all, only following and pursuant to the entry of a  
 19 suitable confidentiality agreement, and only to the extent Google can do so consistent with its  
 20 legal and confidentiality obligations.

21 **REQUEST FOR PRODUCTION NO. 12:**

22 Exemplars of all versions of web pages where an AdWords Customer can opt-out of the  
 23 Content Network.

24 **RESPONSE TO REQUEST FOR PRODUCTION NO. 12:**

25 Google incorporates by reference its general objections stated above. In particular,  
 26 Google objects to this request to the extent it seeks documents relating to period before  
 27 November 2007, on the basis that the request is overly broad and not reasonably calculated to  
 28 lead to the discovery of admissible evidence. The request is also unduly burdensome. Subject to

1 the foregoing objections, and without waiving them, Google responds as follows:

2 Google will produce non-privileged responsive documents in its possession, custody, or  
 3 control that it identifies after a reasonable search and diligent inquiry, and that have not already  
 4 been produced, if any exist.

5 **REQUEST FOR PRODUCTION NO. 13:**

6 All documents which Google might use to support any Affirmative Defense set forth in  
 7 the Answer.

8 **RESPONSE TO REQUEST FOR PRODUCTION NO. 13:**

9 Google incorporates by reference its general objections stated above. In particular,  
 10 Google objects to this request as premature, because Google's investigation and analysis is  
 11 ongoing. Google further objects to this request to the extent that it seeks information protected  
 12 by the attorney-client privilege and/or work product doctrine. Google further objects on the  
 13 ground that this request seeks information that is highly confidential, proprietary and/or  
 14 competitively sensitive. Google will produce such information, if at all, only following and  
 15 pursuant to the entry of a suitable confidentiality agreement, and only to the extent Google can  
 16 do so consistent with its legal and confidentiality obligations. Subject to the foregoing  
 17 objections, and without waiving them, Google responds as follows:

18 Google will produce non-privileged responsive documents in its possession, custody, or  
 19 control that it identifies after a reasonable search and diligent inquiry, and that have not already  
 20 been produced, if any exist.

21

22

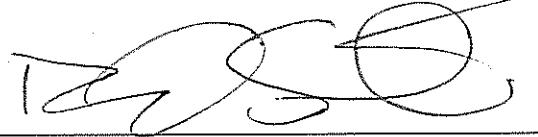
23 Dated: December 5, 2008

KEKER & VAN NEST, LLP

24

25

By:



DAVID J. SILBERT  
Attorneys for Defendant  
GOOGLE, INC., a Delaware corporation

26

27

28

1 PROOF OF SERVICE  
2

3 I am employed in the City and County of San Francisco, State of California in the office of a  
4 member of the bar of this court at whose direction the following service was made. I am over the  
age of eighteen years and not a party to the within action. My business address is Keker & Van  
Nest, LLP, 710 Sansome Street, San Francisco, California 94111.

5 On December 5, 2008, I served the following document(s):

6 **DEFENDANT GOOGLE, INC.'S RESPONSES TO PLAINTIFF'S FIRST  
7 SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS**

8 by **E-MAIL VIA PDF FILE**, by transmitting on this date via e-mail a true and correct copy  
9 scanned into an electronic file in Adobe "pdf" format. The transmission was reported as  
complete and without error

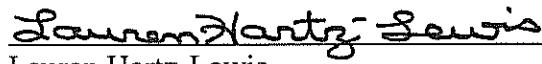
10 and

11 by regular **UNITED STATES MAIL** by placing a true and correct copy in a sealed envelope  
12 addressed as shown below. I am readily familiar with the practice of Keker & Van Nest, LLP  
13 for collection and processing of correspondence for mailing. According to that practice, items  
14 are deposited with the United States Postal Service at San Francisco, California on that same  
15 day with postage thereon fully prepaid. I am aware that, on motion of the party served, service  
is presumed invalid if the postal cancellation date or the postage meter date is more than one  
day after the date of deposit for mailing stated in this affidavit.

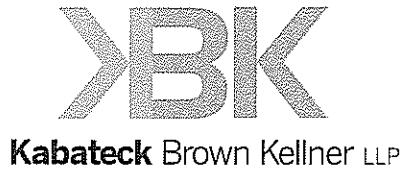
16 Brian S. Kabateck, Esq.  
17 Richard L. Kellner, Esq.  
18 Alfredo Torrijos Esq.  
19 KABATECK BROWN KELLNER, LLP  
20 644 South Figueroa Street  
21 Los Angeles, CA 90017  
22 TEL: (213) 217-5000  
FAX: (213) 217-5010  
EMAIL: [bsk@kbklawyers.com](mailto:bsk@kbklawyers.com)  
EMAIL: [rlk@kbklawyers.com](mailto:rlk@kbklawyers.com)  
EMAIL: [at@kbklawyers.com](mailto:at@kbklawyers.com)

23 Executed on December 5, 2008, at San Francisco, California.  
24

25 I declare under penalty of perjury under the laws of the State of California that the above is true  
and correct.  
26

27   
28 Lauren Hartz-Lewis

**EXHIBIT F**



January 16, 2009

**VIA EMAIL**

David Silbert  
Keker & Van Nest, LLP  
710 Sansome Street  
San Francisco, CA 94111

**RE: Almeida v. Google, Inc.**

Dear Mr. Silbert:

I am writing in an effort to meet and confer regarding your client's responses to plaintiff's First Set of Interrogatories and Requests for Production of Documents in this action. As detailed below, we believe that discovery responses submitted by Google, Inc. are deficient and we therefore presently seek a telephonic conference with you as required by Local Rule 37-1 prior to the filing of a motion to compel. Please let me know if you are available either Monday, January 19th or Tuesday, January 20th for this conference.

**I.**

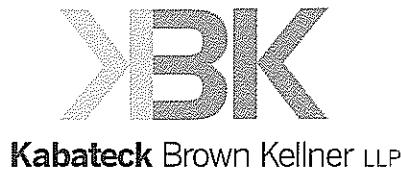
**GOOGLE'S RESPONSES TO PLAINTIFF'S INTERROGATORIES  
ARE FACIALLY DEFICIENT**

Google's responses to Plaintiff's First Set of Interrogatories are deficient for at least two reasons: (i) Google has yet to provide a verification for its responses; and (ii) many of Google's interrogatory responses are not full and complete.

**A. Google Has Yet to Comply with the Signature Requirement of Rule 33.**

Rule 33(b)(3) requires that "[e]ach interrogatory must, to the extent it is not objected to, be answered separately and fully in writing under oath,"

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 January 16, 2009  
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and Rule 33(b)(5) requires that “[t]he person who makes the answers must sign them.” To date, we have yet to receive a verification that Google’s responses to Plaintiff’s First Set of Interrogatories were made under oath. This is unacceptable. See *Saria v. Mass. Mut. Life Ins. Co.*, 228 F.R.D. 536, 540 (S.D. W.Va. 2005) (“The failure to meet the simple requirement of providing verification can only be seen as a flagrant disregard of [the Federal] Rules, Advisory Notes, and case precedents”). Please advise us at your earliest convenience when we can except your client’s verification.

**B. Google’s Boilerplate Objections to Interrogatories 3, 4, 5, 6 and 8 Are Unfounded and Do Not Excuse Google’s Failure to Provide Responses.**

Your client asserts the same boilerplate objections in its responses to Plaintiff’s Interrogatories 3, 4, 5, 6 and 8 – namely, that the interrogatories are “overly broad and extremely burdensome” and that the interrogatories seek confidential, proprietary information. We believe these objection are meritless and do not justify Google’s refusal to provide any of the information requested.

Google fails to forward any reason why it would be unduly burdensome for it to provide the requested information. A blanket assertion – like the one made by Google here – that responding to discovery is “unduly burdensome” is insufficient under the Federal Rules of Civil Procedure. “[T]he fact that the production of documents may involve inconvenience and expense is not alone a sufficient reason for refusing discovery which is otherwise appropriate.” *U.S. v. American Optical Co.*, 39 F.R.D. 580, 587 (N.D. Cal 1966). Google’s apparent reliance on these objections for refusing to provide plaintiff with the requested discovery is especially inappropriate given the nature of the information sought. Interrogatories 3, 4, 5, 6 and 8 seek, in general terms, information on the number of customers included in the class, the number of advertising campaigns created by class members, and the amount charged class members for content ads when the CPC Content Bid Input was left blank. Plaintiff, frankly, would be shocked if Google does not already maintain this

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 January 16, 2009  
 Page 3 of 8



information in the normal course of its business. We also find it peculiar that Google would assert that collecting the information sought by Plaintiff is burdensome given that it is in the business of “organizing the world’s information.”

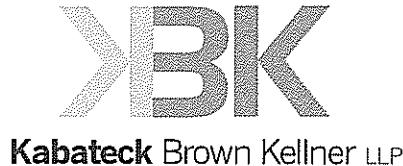
Google’s refusal to provide the requested discovery on the basis that the information sought is confidential and/or proprietary is also not well taken. There is no absolute privilege against discovery of a party’s trade secrets or similar confidential information. *DirecTV, Inc. v. Trone*, 209 F.R.D. 455, 459-60, (C.D. Cal. 2002). The burden is on the party opposing discovery to make an affirmative showing that the information is a trade secret under Rule 26(c)(7), that the disclosure of the information would be harmful, and that the harm outweighs the other party’s legitimate discovery interests. *Id.* Indeed, under federal case law, once the requesting party “has established relevance and necessity [of producing the trade secret], the discovery is virtually always ordered.” *Trevino v. ACB American, Inc.*, 232 F.R.D. 612, 617 (N.D. Cal. 2006) (internal quotes and citations omitted).

We are cognizant of Google’s offer to provide the requested information and documents once a protective order is agreed upon by the parties and entered by the Court. To that end we have enclosed with this letter a proposed protective order for your consideration. While we are willing to work with you in good faith toward arriving at a stipulated protective order that the parties can jointly submit to the Court for its approval, we are unable to delay our discovery in this action much longer. We therefore ask that you please provide us with your comments regarding our proposed protective order post haste.

#### **C. Google Has Failed to Provide Full and Complete Responses to Plaintiff’s Interrogatories.**

While Google has provided some information in its responses to Interrogatories 7, 10, 12 and 13, its responses are nonetheless facially deficient since Google fails to fully respond to the discovery as is required by the Federal Rules of Civil Procedure. FRCP 33(b)(3).

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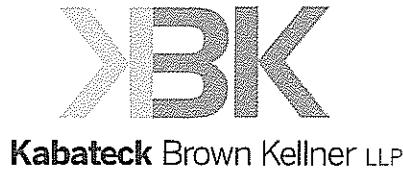


Interrogatory No. 7 requests the number of AdWords Customers who initiated one or more AdWords Campaigns where the CPC Content Bid Input was set to zero, for each month and year from October 2007. Google's response to this interrogatory is deficient for two reasons. First, Google fails to answer the question. If Google is attempting to indicate that there have been no AdWords Campaigns initiated where the CPC Content Bid Input was set to zero because they are shown the referenced message and prevented from continuing the Advertising Campaign Creation Process, then Google should so indicate. Second, plaintiff cannot discern whether whatever practice is in fact employed has been the consistently and universally applied from October 2007 to the present.

Interrogatory No. 10 requests information on all changes, including the date the change was made, to the procedure Google uses to determine the Content Bid when the CPC Content Bid Input is left blank. Google's response to this interrogatory is deficient for two reasons. First, the response fails to give sufficient detail about the process or procedure used by Google to determine a Content Bid when the CPC Content Bid Input is left blank. For example, the response indicates that Google uses data to discount the amount of the automatic bid based on its effectiveness compared to a search ad. The response however, fails to specify what information Google relies on. Second, the response is also deficient because it gives no indication if, or how, this procedure may have changed since its implementation in October 2007.

Interrogatory No. 12 requests information on changes, including the date the change was made, to the procedure by which AdWords Customers could opt out from the Content Network. Google's response to this interrogatory is deficient because it simply cites two examples of how an Adwords Customer can opt out of the Content Network during the Campaign Creation Process. This does not fully answer the interrogatory. If the two cited examples are to only two methods by which an Adwords Customer could have opted out of the Content Network during the Campaign Creation Process, we request that this be made clear in the

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 January 16, 2009  
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response. If that is not the case, a sufficient response to the interrogatory requires a description of all methods by which this opt out could have been accomplished.

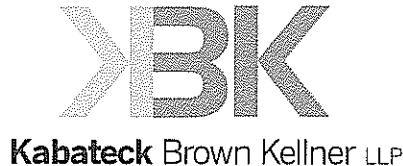
Interrogatory No. 13 seeks information on the procedures Google uses to track the complaints made by, or refunds given to, AdWords Customers who were charged for Content Network ads where the CPC Content Bid Input was left blank. Google's fails to provide the information actually requested by this interrogatory and instead states that some database may or may not track emails that may or may not be complaints. This is wholly insufficient. Plaintiff requests that Google provide the parameters used to determine which customer contacts are tracked. Plaintiff also requests that Google provide the criteria used by to determine whether to issue a refund to a customer. Additionally, to the extent Google objects to this interrogatory based on attorney-client privilege or the work product doctrine, this objection is insufficient. The FRCP requires the grounds for any objection be stated with specificity. FRCP 33(b)(4). Google's boilerplate objection does not suffice.

## II.

### **TO DATE GOOGLE HAS FAILED TO PROVIDE ANY DOCUMENTS IN RESPONSE TO PLAINTIFF'S DISCOVERY REQUESTS**

We received Google's written responses and objections to Plaintiff's First Set of Requests for Production of Documents a bit over a month ago. However, we have not yet received documents in response to *any* of plaintiff's requests – *even for the request that Google has forwarded no objections and has stated that it would be producing documents.* Specifically, Google objected to Request No. 1 only to the extent it seeks documents from before October 2007. However, Google failed to produce any documents from after October 2007.

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 January 16, 2009  
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### III.

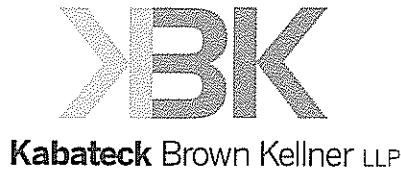
## **GOOGLE'S STATED OBJECTIONS TO PLAINTIFF'S REQUESTS FOR PRODUCTION OF DOCUMENTS ARE MERITLESS**

### **A. Google's Boilerplate Objections to Plaintiff's First Set of Requests for Production of Documents Are Unfounded and Do Not Excuse Google's Failure to Provide the Requested Documents.**

Google objects to nearly all of plaintiff's requests on the grounds that production of the requested documents would be unduly burdensome. However, just as with its responses to plaintiff's Interrogatories, Google wholly fails to provide any support for this objection. These blanket, unfounded objections are insufficient under the FRCP. “[T]he fact that the production of documents may involve inconvenience and expense is not alone a sufficient reason for refusing discovery which is otherwise appropriate.” *U.S. v. American Optical Co.*, 39 F.R.D. 580, 587 (N.D. Cal 1966).

Google similarly objects to nearly all of Plaintiff's requests on the grounds that they seek documents protected from disclosure by the attorney-client privilege and/or the attorney work product doctrine. But again these, “boilerplate objections or blanket refusals inserted into a response to a Rule 34 request for production of documents are insufficient to assert a privilege.” *Burlington Northern & Santa Fe Ry. Co. v. U.S. Dist. Court for Dist. of Mont.*, 408 F.3d 1142, 1149 (9th Cir. 2005). To the extent that Google has a legitimate objection based on privilege, it is required to identify and describe the documents in sufficient detail to enable the demanding party to assess the applicability of the privilege. FRCP 26(b)(5).

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January 16, 2009  
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**B. Google's Objections that Plaintiff's Requests for Production Are Outside the Scope of Discovery are Unfounded.**

Google objects to Requests for Production Nos. 2 and 3 on the grounds that they seek documents from before October 2007. Google asserts that these requests are not reasonably calculated to lead to the discovery of admissible evidence. That is incorrect. The requested documents may contain information related to numerous elements of Plaintiff's claims against Google, including Google's knowledge of the falsity of its statements, Google's duty to disclose concealed facts, and information related the FRCP 23 requirements for class certification.

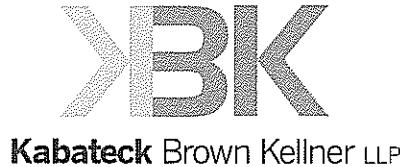
Likewise, Google's objections to Requests for Production Nos. 11 and 12 on the grounds that they seek documents from before November 2007. Plaintiff assumes that Google intended to object to the production of documents from before November 2005, as this was the date Google identified as when it first allowed AdWords Customers to set Content Bids. However, these documents may also contain information related to numerous elements of Plaintiff's claims against Google, including Google's knowledge of the falsity of its statements, Google's duty to disclose concealed facts and may contain information related the FRCP 23 requirements for class certification.

**C. Google's Objections Based on Ambiguity and Privacy Are Baseless.**

Google objects to Request for Production No. 9 because it finds the terms "exemplar" and "all" vague and ambiguous. Google's claim of failure to comprehend these terms is surprising since it appeared to understand those two terms when used in Requests for Production Nos. 1 and 2. However, Google's interpretation that the request seeks only examples of invoices, not specific invoices, is correct.

Since this Request does not seek the actual invoices from specific customers, Google's objection based on the privacy of its customers has no

David Silbert  
January 16, 2009  
Page 8 of 8



merit. To the extent an actual invoice would be the best "exemplar," Google can redact all private information.

**D. Plaintiff Is Willing to Meet and Confer in Order to Arrive At An Efficient Methodology for the Production of Documents Responsive to Requests Nos. 7 and 8.**

Plaintiff's Requests Nos. 7 and 8 seek documents relating to complaints or inquiries by AdWords Customers concerning the use of the CPC Content Bid Input or charges stemming from Content Network advertisements where the AdWords Customer left the CPC Content Bid Input blank. Google objects based on its assertion that a search for these documents would be extraordinarily burdensome. While Plaintiff does not share Google's view that such a search would be represent an extraordinary burden, it is willing to meet and confer to attempt to identify ways to limit any extraneous documents that may result from the search. This will, however, require that Google provide a more specific and thorough response to his Interrogatory No. 13 in order to understand Google's procedures for tracking and storing complaints from its customers.

I look forward to hearing from you regarding your availability to meet and confer this week.

Very truly yours,

KABATECK BROWN KELLNER LLP

A handwritten signature in black ink, appearing to read 'Michael Storti', is placed over a horizontal line.

MICHAEL STORTI

**EXHIBIT G**



February 2, 2009

**VIA EMAIL**

David Silbert  
Keker & Van Nest, LLP  
710 Sansome Street  
San Francisco, CA 94111

**RE: *Almeida v. Google, Inc.* – Google’s Discovery Responses**

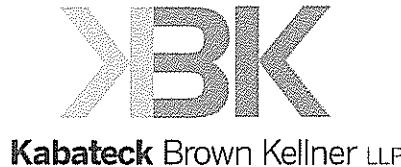
Dear Mr. Silbert:

I am writing to follow-up on my email to you of last Tuesday. As I noted in that email we have not yet received (i) a proposed protective order from you – or, alternatively, suggested revisions to the proposed protective order that we provided you on January 16, 2009; (ii) a timeline regarding when your client will provide further, substantive responses to Plaintiff’s interrogatories; or (iii) documents responsive to Plaintiff’s discovery requests. During our telephone conference of January 20, 2009 you agreed to provide all the above to us by no later than the beginning of last week; your silence is, therefore, disconcerting.

As you may recall, Google advanced several objections to Plaintiffs’ discovery requests. During our telephonic meet and confer, we discussed ways to address Google’s concerns. One of Google’s objections was that its responses to Plaintiff’s discovery requests would require the disclosure of confidential, proprietary information and that it would only respond pursuant to a protective order. Plaintiff indicated that he was agreeable to a protective order and enclosed a proposed protective order with his letter requesting a meet and confer. During the meet and confer, you indicated that you would provide us with your client’s proposed protective order. However, we have not yet received the proposed protective order.

Google also objected based on its assertion that responding to several of Plaintiff’s interrogatories would constitute an undue burden. You represented that Google would have to create search algorithms to identify

David Silbert  
February 2, 2009  
Page 2 of 2



the requested information. In an effort to aid in the search, Plaintiff narrowed the scope of some of the interrogatories and delayed or eliminated others. Plaintiff simply requested a timeline of when Google would be able to conduct its search and begin responding to the interrogatories. To date, Plaintiff has not received this timeline. Please provide Plaintiff with a timeline of when your client will be able to begin responding to Plaintiff's interrogatories by 5:00 p.m., Friday, February 6, 2009.

Further, you indicated that a significant number of documents had been collected and were ready for production. You stated that production was dependent on the document format Plaintiff preferred. Plaintiff informed you via email later that day that production in PDF format was preferable. However, more than a week has passed and no documents have been produced. Please begin producing documents responsive to Plaintiff's request no later than 5:00 p.m., Friday, February 6, 2009.

Finally, Plaintiff has yet to receive a signed verification for Google's responses to Plaintiff's interrogatories, as required by FRCP 33(b)(3). Please provide the signed verification by 5:00 p.m., Friday, February 6, 2009.

While it is Plaintiff's desire to resolve these issues without resorting to the court, he cannot afford any more delay. Accordingly, if Plaintiff does not receive the above requested documents by 5:00 p.m., Friday, February 6, 2009, he will be forced to file a motion to compel production.

Very truly yours,

**KABATECK BROWN KELLNER LLP**

A handwritten signature in black ink, appearing to read "Michael V. Storti".

Michael V. Storti

cc:

Alfredo Torrijos (via email)

**EXHIBIT H**

LAW OFFICES  
**KEKER & VAN NEST**  
LLP

710 SANSOME STREET  
SAN FRANCISCO, CA 94111-1704  
TELEPHONE (415) 391-5400  
FAX (415) 397-7188  
WWW.KVN.COM

DAVID J. SILBERT  
DSILBERT@KVN.COM

February 18, 2009

**VIA EMAIL**

Michael V. Storti  
Kabateck Brown Kellner LLP  
644 South Figueroa St.  
Los Angeles, CA 90017

Re: David Almeida v. Google Inc., Case No. 08-02088 RMW

Dear Mr. Storti:

I write concerning your recent correspondence and our January 23, 2009 meet-and-confer regarding discovery. Your correspondence suggests that our discovery compliance has not been timely and in good faith. We strongly disagree. As you are aware, the discovery responses Google served on December 5, 2008 made clear that Plaintiff's discovery demands were unreasonably overbroad and burdensome, but we specifically invited your office to meet-and-confer about those demands and to agree on reasonable parameters for document and information searches. After we did not hear from you for over a month, we asked several times to set up a meet-and-confer for that purpose, without receiving a response. When we finally did meet-and-confer at the end of January, we explained our desire to work cooperatively with you, as well as the need for you to constrain your requests to reasonable limits. We write now to confirm the substance of our discussions, explain where we stand with respect to many of these demands, and reiterate our desire to work cooperatively in discovery.

**DOCUMENT PRODUCTION**

During our meet and confer, you confirmed that you seek to certify a class only of advertisers who were presented with a content bid window on the campaign creation page, which first appeared in October 2007. In general, you agreed that our responses to your Interrogatories and Requests for Production will be limited to information or documents created between October 2007 and the present. You requested, however, that we search for documents between November 2005 and the present in response to your Requests for Production Nos. 2 and 3. We agree to produce non-privileged responsive documents that we identify after a reasonable search. Similarly, we will agree to produce such documents dating from November 2005 through the present in response to your Requests for Production Nos. 11 and 12.

Michael V. Storti  
 February 18, 2009  
 Page 2

We also discussed your Requests for Production Nos. 7 and 8. I explained that responses to those requests require Google to engage in an extraordinarily burdensome and time-consuming search through vast amounts of data. As you requested, we will agree to supplement our response to Interrogatory No. 13 to further describe the search that would be required. You said during our discussions that, if there is no direct way to identify customer complaints relating to the identified issues, you would not pursue these requests.

Finally, as we noted in our responses to your Requests for Production of Documents, Plaintiff's requests would require the disclosure of confidential, proprietary information. Accordingly, Google cannot produce documents until the parties have agreed to a protective order. I have attached a proposed protective order to this letter and look forward to discussing it with you.

### **INTERROGATORIES**

You agreed to forego your requests for data broken down by month in the interrogatories that request it, and instead to accept composite data that is not broken down by any specific time period. You also agreed to forego a response to Interrogatory No. 5.

We already have responded to Interrogatories 1,2, 7, 9, 10, 11, 12, and 13 and we are working to resolve the few remaining disputes regarding our responses to those Interrogatories. In particular, you requested that we clarify our response to Interrogatory No. 7 regarding whether an advertiser was prohibited from entering a content bid of "zero" since October 2007. You also requested that we provide more information regarding the circumstances in which an advertiser could opt out of the content network (Interrogatory No. 12) and for additional information regarding the burdens associated with tracking complaints made by advertisers about clicks on the content network (Interrogatory No. 13). We are working to obtain this information and will provide you with supplemental responses accordingly within two weeks. Additionally, you requested that we provide a supplemental response to Interrogatory No. 10. As I previously explained, we believe that the information you're seeking will be contained in documents that we intend to produce; accordingly, we will supplement with reference to those bates-numbered documents once they are produced.

As I explained during our meet and confer, as far as we can determine, Google does not keep the information that you requested in Interrogatory Nos. 3, 4, 6, and 8 in the ordinary course of business. To provide the responses you requested, therefore, Google engineers must gather, process, and analyze vast amounts of data. This will require a time-consuming search for the raw data—much of which is only available on a user-by-user basis—and also will require the engineers to develop and implement a methodology for deriving the responses. They will need to do all this in addition to fulfilling their regular engineering duties at Google.

In the interests of cooperating with you on discovery matters, however, we will in good faith attempt to derive data responsive to these Interrogatories, within the limits noted above. Given the difficulty in obtaining and analyzing the data you have requested, however, we may ultimately be unable to respond fully and completely to each of Interrogatories 3, 4, 6, and 8.

Michael V. Storti  
February 18, 2009  
Page 3

We will update you on the status of the searches on or before March 1, 2009, and keep you apprised of the progress thereafter. As I explained during the meet-and-confer, because of the extraordinary burden on Google, we will perform a data search and analysis only once, and we will object to piecemeal requests in the future.

Finally, as discussed, a proposed protective order is attached to this letter for your consideration. Google will also provide you a verification for the Interrogatory Responses. The employee who is authorized to provide that verification is currently on vacation and will not return for another week. We will provide the verification upon her return. Please let us know if you have any concerns in this regard.

\*\*\*\*\*

Thank you again for a productive meet and confer conversation. Although there are still several remaining issues to resolve, we are well on our way to achieving mutually agreeable solutions. I look forward to discussing these with you and to cooperating on any additional issues that may arise.

Very truly yours,



DAVID J. SILBERT

DJS/adb

1 BRIAN S. KABATECK SBN 152054  
2 RICHARD L. KELLNER SBN 171416  
3 ALFREDO TORRIJOS SBN 222458  
4 KABATECK BROWN KELLNER LLP  
644 South Figueroa Street  
Los Angeles, California 90017  
Telephone: (213) 217-5000  
Facsimile: (213) 217-5010

6 Attorneys for Plaintiff and the Proposed Class  
DAVID ALMEIDA

7 KEKER & VAN NEST, LLP  
CHRISTA M. ANDERSON - #184325  
8 DAVID J. SILBERT - #173128  
ALYSE BERTENTHAL - #253012  
9 710 Sansome Street  
San Francisco, CA 94111-1704  
10 Telephone: (415) 391-5400  
Facsimile: (415) 397-7188

11 Attorneys for Defendant  
12 GOOGLE, INC., a Delaware corporation

18 DAVID ALMEIDA, individually and on behalf of all others similarly situated,

**Plaintiff**

Case No. C 08-02088 RMW

**STIPULATED PROTECTIVE ORDER;  
[PROPOSED] ORDER THEREON**

### Defendants.

## I. AGREED PROTECTIVE ORDER

To expedite the flow of discovery materials, to facilitate the prompt resolution of disputes over confidentiality of discovery materials, to adequately protect information the parties are entitled to keep confidential, to ensure that only materials the parties are entitled to keep confidential are subject to such treatment, and to ensure that the parties are permitted reasonably necessary uses of such materials in preparation for and in the conduct of trial, pursuant to Fed. R. Civ. P. 26(c), it is hereby ORDERED THAT:

## **II. INFORMATION SUBJECT TO THIS ORDER**

9       Discovery materials produced in this case may be labeled as one of two categories:  
10 CONFIDENTIAL and CONFIDENTIAL OUTSIDE COUNSEL ONLY, as set forth in below.  
11 Each of the identified categories of information shall be identified collectively in this Order by  
12 the title "Protected Information."

#### **A. Limitations on the Use of Protected Information**

14        1. Any Protected Information obtained by any party from any person pursuant to  
15 discovery in this litigation may be used only for purposes of this litigation.

16       2. Any document or tangible thing containing or including any Protected  
17 Information may be designated as such by the producing party by marking it  
18 "CONFIDENTIAL" or "CONFIDENTIAL OUTSIDE COUNSEL ONLY" prior to or at the time  
19 copies are furnished to the receiving party.

20       3. All Protected Information not reduced to documentary, tangible or physical form  
21 or which cannot be conveniently designated as set forth in paragraph 2, shall be designated by  
22 the producing party by informing the receiving party of the designation in writing.

23       4. Any documents (including physical objects) made available for inspection by  
24 counsel for the receiving party prior to producing copies of selected items shall initially be  
25 considered, as a whole, to constitute Protected Information and shall be subject to this Order.  
26 Thereafter, the producing party shall have a reasonable time to review and designate the  
27 appropriate documents as Protected Information prior to furnishing copies to the receiving party.

1           **B. Information Designated as Confidential Information**

2           5. For purposes of this Order, "CONFIDENTIAL INFORMATION" shall mean all  
 3 information or material produced for or disclosed to a receiving party that a producing party,  
 4 including any party to this action and any non-party producing information or material  
 5 voluntarily or pursuant to a subpoena or a court order, considers to constitute confidential  
 6 technical, sales, marketing, financial, or other commercially sensitive information, whether  
 7 embodied in physical objects, documents, or the factual knowledge of persons, and which has  
 8 been so designated by the producing party.

9           6. The following information is not CONFIDENTIAL INFORMATION:

- 10           (a) Published advertising materials;
- 11           (b) Any information which is or, after its disclosure to a receiving party,  
                 becomes part of the public domain as a result of publication not involving a  
                 violation of this Order;
- 12           (c) Any information that the receiving party can show was already known to it  
                 prior to the disclosure;
- 13           (d) Any information which the receiving party can show by written records  
                 was received by it after the disclosure from a source who obtained the information  
                 lawfully and under no obligation of confidentiality to the producing party; and
- 14           (e) Any information which the receiving party can show was independently  
                 developed by it after the time of disclosure by personnel who did not have access  
                 to the producing party's CONFIDENTIAL INFORMATION.

15           7. Documents designated CONFIDENTIAL and information contained therein shall  
 16 be available only to:

- 17           (a) Outside litigation counsel of record and supporting personnel employed in  
                 the law firm(s) of outside litigation counsel of record, such as attorneys,  
                 paralegals, legal translators, legal secretaries, legal clerks and shorthand reporters;
- 18           (b) Technical advisers and their necessary support personnel, subject to the  
                 provisions of paragraphs 10-15 herein, and who have signed the form attached

1 hereto as Attachment A;

2 (c) The parties in-house counsel with responsibility for managing this  
 3 litigation and employees of a party who either have responsibility for making  
 4 decisions dealing directly with the litigation in this action or who are assisting  
 5 outside counsel in preparation for proceedings in this action;

6 (d) The Court, its personnel and stenographic reporters (under seal or with  
 7 other suitable precautions determined by the Court); and

8 (e) Independent legal translators retained to translate in connection with this  
 9 action; independent stenographic reporters and videographers retained to record  
 10 and transcribe testimony in connection with this action; graphics, translation, or  
 11 design services retained by counsel for purposes of preparing demonstrative or  
 12 other exhibits for deposition, trial, or other court proceedings in the actions; non-  
 13 technical jury or trial consulting services not including mock jurors.

14 **C. Information Designated Confidential Outside Counsel Only**

15 8. The CONFIDENTIAL OUTSIDE COUNSEL ONLY designation is reserved for  
 16 CONFIDENTIAL INFORMATION that constitutes proprietary marketing, financial, sales, web  
 17 traffic, research and development, or technical data/information or commercially sensitive  
 18 competitive information, including, without limitation, confidential information obtained from a  
 19 nonparty pursuant to a current Nondisclosure Agreement (“NDA”), CONFIDENTIAL  
 20 INFORMATION relating to future products not yet commercially released, strategic plans, and  
 21 settlement agreements or settlement communications, the disclosure of which is likely to cause  
 22 harm to the competitive position of the producing party. Documents marked CONFIDENTIAL  
 23 OUTSIDE ATTORNEYS’ EYES ONLY shall be treated as if designated CONFIDENTIAL  
 24 OUTSIDE COUNSEL ONLY. In determining whether information should be designated as  
 25 CONFIDENTIAL OUTSIDE COUNSEL ONLY, each party agrees to use such designation only  
 26 in good faith.

27 9. Documents designated CONFIDENTIAL OUTSIDE COUNSEL ONLY and  
 28 information contained therein shall be available only to:

- (a) Outside litigation counsel of record and supporting personnel employed in the law firm(s) of outside litigation counsel of record, such as attorneys, paralegals, legal translators, legal secretaries, legal clerks and shorthand reporters;
  - (b) Technical advisers and their necessary support personnel, subject to the provisions of paragraphs 10-15 herein, and who have signed the form attached hereto as Attachment A;
  - (c) The Court, its personnel and stenographic reporters (under seal or with other suitable precautions determined by the Court); and
  - (d) Independent legal translators retained to translate in connection with this action; independent stenographic reporters and videographers retained to record and transcribe testimony in connection with this action; graphics, translation, or design services retained by counsel for purposes of preparing demonstrative or other exhibits for deposition, trial, or other court proceedings in the actions; non-technical jury or trial consulting services not including mock jurors.

## **DISCLOSURE OF TECHNICAL ADVISERS**

16        10. Information designated by the producing party under any category of Protected  
17 Information and such copies of this information as are reasonably necessary for maintaining,  
18 defending or evaluating this litigation may be furnished and disclosed to the receiving party's  
19 technical advisers and their necessary support personnel. The term "technical adviser" shall  
20 mean an independent, outside expert witness or consultant with whom counsel may deem it  
21 necessary to consult and who complies with paragraph 12.

22        11. No disclosure of Protected Information to a technical adviser or their necessary  
23 support personnel shall occur until that person has signed the form attached hereto as Attachment  
24 A, and a signed copy has been provided to the producing party; and to the extent there has been  
25 an objection under paragraph 13, that objection is resolved as discussed below.

26        12. A party desiring to disclose Protected Information to a technical adviser shall also  
27 give prior written notice by email to the producing party, who shall have ten (10) business days  
28 after such notice is given to object in writing. The party desiring to disclose Protected

Information to a technical adviser must provide the following information for each technical adviser: name, address, curriculum vitae, current employer, employment history for the past four (4) years, and a listing of cases in which the witness has testified as an expert at trial or by deposition within the preceding four years. No Protected Information shall be disclosed to such expert(s) or consultant(s) until after the expiration of the foregoing notice period.

6        13. A party objecting to disclosure of Protected Information to a technical adviser  
7 shall state with particularity the ground(s) of the objection and the specific categories of  
8 documents that are the subject of the objection. The objecting party's consent to the disclosure  
9 of Protected Information to a technical adviser shall not be unreasonably withheld, and its  
10 objection must be based on that party's good faith belief that disclosure of its Protected  
11 Information to the technical adviser will result in specific business or economic harm to that  
12 party.

13        14. If after consideration of the objection, the party desiring to disclose the Protected  
14 Information to a technical adviser refuses to withdraw the technical adviser, that party shall  
15 provide notice to the objecting party. Thereafter, the objecting party shall move the Court,  
16 within ten (10) business days of receiving such notice, for a ruling on its objection. A failure to  
17 file a motion within the ten (10) business day period shall operate as an approval of disclosure of  
18 the Protected Information to the technical adviser. The parties agree to cooperate in good faith to  
19 shorten the time frames set forth in this paragraph if necessary to abide by any discovery or  
20 briefing schedules.

21       15. The objecting party shall have the burden of showing to the Court "good cause"  
22 for preventing the disclosure of its Protected Information to the technical adviser. This "good  
23 cause" shall include a particularized showing that: (1) the Protected Information is confidential  
24 commercial information, (2) disclosure of the Protected Information would result in a clearly  
25 defined and serious injury to the objecting party's business, and (3) the proposed technical  
26 advisor is in a position to allow the Protected Information to be disclosed to the objecting party's  
27 competitors.

## 28 || CHALLENGES TO CONFIDENTIALITY DESIGNATIONS

1       16. The parties shall use reasonable care when designating documents or information  
2 as Protected Information. Nothing in this Order shall prevent a receiving party from contending  
3 that any documents or information designated as Protected Information have been improperly  
4 designated. A receiving party may at any time request that the producing party cancel or modify  
5 the Protected Information designation with respect to any document or information contained  
6 therein.

7       17. A party shall not be obligated to challenge the propriety of a designation of any  
8 category of Protected Information at the time of production, and a failure to do so shall not  
9 preclude a subsequent challenge thereto. Such a challenge shall be written, shall be served on  
10 counsel for the producing party, and shall particularly identify the documents or information that  
11 the receiving party contends should be differently designated. The parties shall use their best  
12 efforts to resolve promptly and informally such disputes. If an agreement cannot be reached, the  
13 receiving party shall request that the Court cancel or modify a designation. The burden of  
14 demonstrating the confidential nature of any information shall at all times be and remain on the  
15 designating party.

16       18. Until a determination by the Court, the information in issue shall be treated as  
17 having been properly designated and subject to the terms of this Order.

18       **LIMITATIONS ON THE USE OF PROTECTED INFORMATION**

19       19. All Protected Information shall be held in confidence by each person to whom it  
20 is disclosed, shall be used only for purposes of this litigation, shall not be used for any business  
21 purpose, and shall not be disclosed to any person who is not entitled to receive such information  
22 as herein provided. All produced Protected Information shall be carefully maintained so as to  
23 preclude access by persons who are not entitled to receive such information.

24       20. Except as may be otherwise ordered by the Court, any person may be examined as  
25 a witness at depositions and trial and may testify concerning all Protected Information of which  
26 such person has prior knowledge. Without in any way limiting the generality of the foregoing:

27               (a) A present director, officer, and/or employee of a producing party may be  
28 examined and may testify concerning all Protected Information which has been

1                   produced by that party and which identifies on its face the present director,  
 2                   officer, and/or employee as an author or recipient;

3                   (b)       A former director, officer, agent and/or employee of a producing party  
 4                   may be interviewed, examined and may testify concerning all Protected  
 5                   Information of which he or she has prior knowledge, including any Protected  
 6                   Information that refers to matters of which the witness has personal knowledge,  
 7                   which has been produced by that party and which pertains to the period or periods  
 8                   of his or her employment; and

9                   (c)       Non-parties may be examined or testify concerning any document  
 10                  containing Protected Information of a producing party which appears on its face  
 11                  or from other documents or testimony to have been received from or  
 12                  communicated to the non-party as a result of any contact or relationship with the  
 13                  producing party or a representative of the producing party. Any person other than  
 14                  the witness, his or her attorney(s), or any person qualified to receive Protected  
 15                  Information under this Order shall be excluded from the portion of the  
 16                  examination concerning such information, unless the producing party consents to  
 17                  persons other than qualified recipients being present at the examination. If the  
 18                  witness is represented by an attorney who is not qualified under this Order to  
 19                  receive such information, then prior to the examination, the producing party shall  
 20                  request that the attorney provide a signed statement, in the form of Attachment A  
 21                  hereto, that he or she will comply with the terms of this Order and maintain the  
 22                  confidentiality of Protected Information disclosed during the course of the  
 23                  examination. In the event that such attorney declines to sign such a statement  
 24                  prior to the examination, the parties, by their attorneys, shall jointly seek a  
 25                  protective order from the Court prohibiting the attorney from disclosing Protected  
 26                  Information.

27                  21.      All transcripts of depositions, exhibits, answers to interrogatories, pleadings,  
 28                  briefs, and other documents submitted to the Court which have been designated as Protected

1 Information, or which contain information so designated, shall be filed under seal in a manner  
 2 prescribed by the Court for such filings.

3       22. Outside attorneys of record for the parties are hereby authorized to be the persons  
 4 who may retrieve confidential exhibits and/or other confidential matters filed with the Court  
 5 upon termination of this litigation without further order of this Court, and are the persons to  
 6 whom such confidential exhibits or other confidential matters may be returned by the Clerk of  
 7 the Court, if they are not so retrieved. No material or copies thereof so filed shall be released  
 8 except by order of the Court, to outside counsel of record, or as otherwise provided for  
 9 hereunder.

10       23. Protected Information shall not be copied or otherwise produced by a receiving  
 11 party, except for transmission to qualified recipients, without the written permission of the  
 12 producing party, or, in the alternative, by further order of the Court. Nothing herein shall,  
 13 however, restrict a qualified recipient from making working copies, abstracts, digests and  
 14 analyses of CONFIDENTIAL and CONFIDENTIAL OUTSIDE COUNSEL ONLY information  
 15 for use in connection with this litigation and such working copies, abstracts, digests and analyses  
 16 shall be deemed Protected Information under the terms of this Order. Further, nothing herein  
 17 shall restrict a qualified recipient from converting or translating CONFIDENTIAL and  
 18 CONFIDENTIAL OUTSIDE COUNSEL ONLY information into machine readable form for  
 19 incorporation into a data retrieval system used in connection with this action, provided that  
 20 access to that Protected Information, in whatever form stored or reproduced, shall be limited to  
 21 qualified recipients.

22       24. At the request of any party, the original and all copies of any deposition transcript,  
 23 in whole or in part, shall be marked "CONFIDENTIAL" by the reporter. This request may be  
 24 made orally during the deposition or in writing within fifteen (15) days of receipt of the final  
 25 certified transcript. Deposition transcripts shall be treated as CONFIDENTIAL OUTSIDE  
 26 COUNSEL ONLY until the expiration of the time to make a confidentiality designation. Any  
 27 portions so designated shall thereafter be treated in accordance with the terms of this Order.

28       **NONPARTY USE OF THIS PROTECTIVE ORDER**

1           25. A nonparty producing information or material voluntarily or pursuant to a  
 2 subpoena or a court order may designate such material or information as Protected Information  
 3 pursuant to the terms of this Protective Order.

4           26. A nonparty's use of this Protective Order to protect its Protected Information does  
 5 not entitle that nonparty access to the Protected Information produced by any party in this case.

6           **NO WAIVER OF PRIVILEGE**

7           27. Nothing in this Protective Order shall require production of information that a  
 8 party contends is protected from disclosure by the attorney-client privilege, the work product  
 9 immunity or other privilege, doctrine, right, or immunity. If information subject to a claim of  
 10 attorney-client privilege, work product immunity, or other privilege, doctrine, right, or immunity  
 11 is nevertheless inadvertently or unintentionally produced, such production shall in no way  
 12 prejudice or otherwise constitute a waiver or estoppel as to any such privilege, doctrine, right or  
 13 immunity. Any party that inadvertently produces materials protected the attorney-client  
 14 privilege, work product privilege, or other privilege, doctrine, right, or immunity may obtain the  
 15 return of those materials by promptly notifying the recipient(s) and providing a privilege log for  
 16 the inadvertently produced materials. The recipient(s) shall gather and return all copies of the  
 17 privileged material to the producing party, except for any pages containing privileged markings  
 18 by the recipient, which pages shall instead be destroyed and certified as such by the recipient to  
 19 the producing party. Notwithstanding this provision, outside litigation counsel of record are not  
 20 required to delete information that may reside on their respective firm's electronic back-up  
 21 systems that are over-written in the normal course of business.

22           **MISCELLANEOUS PROVISIONS**

23           28. Any of the notice requirements herein may be waived, in whole or in part, but  
 24 only in writing signed by the attorney-in-charge for the party against whom such waiver will be  
 25 effective.

26           29. Inadvertent or unintentional production of documents or things containing  
 27 Protected Information which are not designated as one or more category of Protected  
 28 Information at the time of production shall not be deemed a waiver in whole or in part of a claim

1 for confidential treatment. With respect to documents, the producing party shall immediately  
 2 notify the other parties of the error in writing and provide replacement pages bearing the  
 3 appropriate confidentiality legend. In the event of any unintentional or inadvertent disclosure of  
 4 Protected Information other than in a manner authorized by this Protective Order, counsel for the  
 5 party responsible for the disclosure shall immediately notify opposing counsel of all of the  
 6 pertinent facts, and make every effort to further prevent unauthorized disclosure including,  
 7 retrieving all copies of the Protected Information from the recipient(s) thereof, and securing the  
 8 agreement of the recipients not to further disseminate the Protected Information in any form.  
 9 Compliance with the foregoing shall not prevent the producing party from seeking further relief  
 10 from the Court.

11       30. Within sixty (60) days after the entry of a final non-appealable judgment or order,  
 12 or the complete settlement of all claims asserted against all parties in this action, each party shall,  
 13 at the option of the producing party, either return or destroy all physical objects and documents  
 14 which embody Protected Information it has received, and shall destroy in whatever form stored  
 15 or reproduced, all physical objects and documents, including but not limited to, correspondence,  
 16 memoranda, notes and other work product materials, which contain or refer to any category of  
 17 Protected Information. All Protected Information, not embodied in physical objects and  
 18 documents shall remain subject to this Order. In the event that a party is dismissed before the  
 19 entry of a final non-appealable judgment or order, this same procedure shall apply to any  
 20 Protected Information received from or produced to the dismissed party. Notwithstanding this  
 21 provision, outside litigation counsel of record are not required to delete information that may  
 22 reside on their respective firm's electronic back-up systems that are over-written in the normal  
 23 course of business. Notwithstanding the foregoing, outside counsel shall be entitled to maintain  
 24 copies of all pleadings, motions and trial briefs (including all supporting and opposing papers  
 25 and exhibits thereto), written discovery requests and responses (and exhibits thereto), deposition  
 26 transcripts (and exhibits thereto), trial transcripts, and exhibits offered or introduced into  
 27 evidence at any hearing or trial, and their attorney work product which refers or is related to any  
 28 CONFIDENTIAL and CONFIDENTIAL OUTSIDE COUNSEL ONLY information for archival

1 purposes only. If a party opts to destroy CONFIDENTIAL or CONFIDENTIAL OUTSIDE  
2 COUNSEL ONLY information, the party must provide a Certificate of Destruction to the  
3 producing party.

4       31. If at any time documents containing Protected Information are subpoenaed by any  
5 court, arbitral, administrative or legislative body, the person to whom the subpoena or other  
6 request is directed shall immediately give written notice thereof to every party who has produced  
7 such documents and to its counsel and shall provide each such party with an opportunity to  
8 object to the production of such documents. If a producing party does not take steps to prevent  
9 disclosure of such documents within ten (10) business days of the date written notice is given,  
10 the party to whom the referenced subpoena is directed may produce such documents in response  
11 thereto.

12       32. Testifying experts shall not be subject to discovery on any draft of their reports in  
13 this case and such draft reports, notes or outlines for draft reports are also exempt from  
14 production and discovery.

15       33. Documents produced in this case with a designation of "HIGHLY  
16 CONFIDENTIAL" shall be treated as if such documents were designated as CONFIDENTIAL  
17 OUTSIDE COUNSEL ONLY under this Protective Order.

18       34. This Order is entered without prejudice to the right of any party to apply to the  
19 Court at any time for additional protection, or to relax or rescind the restrictions of this Order,  
20 when convenience or necessity requires. Furthermore, without application to this Court, any  
21 party that is a beneficiary of the protections of this Order may enter a written agreement  
22 releasing any other party hereto from one or more requirements of this Order even if the conduct  
23 subject to the release would otherwise violate the terms herein.

24       35. The United States District Court for the Northern District of California is  
25 responsible for the interpretation and enforcement of this Agreed Protective Order. After  
26 termination of this litigation, the provisions of this Agreed Protective Order shall continue to be  
27 binding except with respect to those documents and information that become a matter of public  
28 record. This Court retains and shall have continuing jurisdiction over the parties and recipients

1 of the Protected Information for enforcement of the provision of this Agreed Protective Order  
2 following termination of this litigation. All disputes concerning Protected Information produced  
3 under the protection of this Agreed Protective Order shall be resolved by the United States  
4 District Court for the Northern District of California.

5 Dated: February \_\_\_, 2009 KEKER & VAN NEST LLP

6

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By: \_\_\_\_\_  
8 DAVID J. SILBERT  
9 Attorneys for Defendant  
GOOGLE, INC.

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DATED: February \_\_\_, 2009 KABATECK BROWN KELLNER LLP

By: \_\_\_\_\_  
BRIAN S. KABATECK  
Attorneys for Plaintiff  
DAVID ALMEIDA

Dated:

By: \_\_\_\_\_  
The Honorable Ronald M. Whyte  
United States District Court Judge

**ATTACHMENT A TO THE STIPULATED PROTECTIVE ORDER****CONFIDENTIAL AGREEMENT**

I reside at \_\_\_\_\_.

1. My present employer is \_\_\_\_\_.

2. My present occupation or job description is \_\_\_\_\_  
\_\_\_\_\_.

3. I have read the Stipulated Protective Order dated \_\_\_\_\_, 2009, and  
have been engaged as \_\_\_\_\_ on behalf of \_\_\_\_\_

in the preparation and conduct of litigation styled *Almeida v.*  
*Google, Inc.*

4. I am fully familiar with and agree to comply with and be bound by the provisions  
of said Order. I understand that I am to retain all copies of any documents designated as  
CONFIDENTIAL and/or CONFIDENTIAL OUTSIDE COUNSEL ONLY information in a  
secure manner, and that all copies are to remain in my personal custody until I have completed  
my assigned duties, whereupon the copies and any writings prepared by me containing any  
CONFIDENTIAL and/or CONFIDENTIAL OUTSIDE COUNSEL ONLY information are to be  
returned to counsel who provided me with such material.

5. I will not divulge to persons other than those specifically authorized by said  
Order, and will not copy or use except solely for the purpose of this action, any information  
obtained pursuant to said Order, except as provided in said Order. I also agree to notify any  
stenographic or clerical personnel who are required to assist me of the terms of said Order.

6. In accordance with paragraph 12 of the Stipulated Protective Order (if applicable),  
I have attached my resume, curriculum vitae or other information to this executed Confidentiality  
Agreement sufficient to identify my current employer and employment history for the past four  
(4) years, and the cases in which I have testified as an expert at trial or by deposition within the  
preceding four (4) years.

7. I state under penalty of perjury under the laws of the United States of America that the  
foregoing is true and correct.

1 Executed on \_\_\_\_\_, 2009.  
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**EXHIBIT I**

1 KEKER & VAN NEST, LLP  
2 CHRISTA M. ANDERSON - #184325  
3 DAVID J. SILBERT - #173128  
4 ALYSE BERTENTHAL - #253012  
5 710 Sansome Street  
6 San Francisco, CA 94111  
7 Telephone: (415) 391-5400  
8 Facsimile: (415) 397-7188  
9  
10 Attorneys for Defendant  
11 GOOGLE INC.

12 BRIAN S. KABATECK SBN 152054  
13 RICHARD L. KELLNER SBN 171416  
14 ALFREDO TORRIJOS SBN 222458  
15 KABATECK BROWN KELLNER LLP  
16 644 South Figueroa Street  
17 Los Angeles, California 90017  
18 Telephone: (213) 217-5000  
19 Facsimile: (213) 217-5010

**\*E-FILED - 4/2/09\***

20 Attorneys for Plaintiff  
21 DAVID ALMEIDA

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28  
UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

DAVID ALMEIDA, individually and on  
behalf of all others similarly situated,

Case No. C 08-02088 RMW

Plaintiff,  
**STIPULATION AND []  
ORDER MODIFYING CASE SCHEDULE**

v.

GOOGLE INC., a Delaware corporation; and  
DOES 1 through 10, inclusive,

Defendants.

WHEREAS, at the case management conference on August 15, 2008, the parties jointly submitted a proposed schedule which the Court subsequently adopted;

WHEREAS, since that time, the parties have been diligently pursuing discovery;

WHEREAS, discovery in this matter is taking longer than the parties originally anticipated;

WHEREAS, Google has to date produced approximately 180,000 pages of documents, but believes that additional information still remains to be identified, collected, and produced in response to Plaintiff's document requests;

WHEREAS, no previous extensions to the case schedule have been requested;

NOW THEREFORE, pursuant to the agreement of the parties:

IT IS HEREBY STIPULATED THAT, the Scheduling and Case Management Order should be amended to adjust the dates by approximately 120 days, with new dates set as follows:

- Plaintiff shall file and serve (1) any expert report(s) on class certification; and (2) his motion for class certification no later than August 3, 2009.
  - Defendant shall file and serve (1) any expert report(s) on class certification; and (2) its opposition to class certification no later than September 4, 2009.
  - Plaintiff shall file and serve his reply in support of the motion for class certification no later than September 21, 2009.
  - The parties shall conduct a mediation on or before October 9, 2009.
  - The hearing on Plaintiff's motion for class certification before the Court shall take place on October 23, 2009, or at another date set by the Court.
  - Non-expert discovery shall be completed no later than March 2, 2010.
  - Expert opening reports shall be submitted by March 9, 2010.
  - Expert opposition reports shall be submitted by March 23, 2010.
  - Expert reply reports shall be submitted by April 6, 2010.
  - Expert discovery shall be completed no later than April 13, 2010.

1 SO STIPULATED.  
2  
3

Dated: \_\_\_\_\_

KABATECK BROWN KELLNER LLP

6 By: /s/ Alfredo Torrijos \_\_\_\_\_  
7 ALFREDO TORRIJOS  
8 Attorneys for Plaintiff and the  
Proposed Class  
DAVID ALMEIDA  
9  
10

Dated: \_\_\_\_\_

KEKER & VAN NEST, LLP

12 By: /s/ David J. Silbert \_\_\_\_\_  
13 DAVID J. SILBERT  
14 Attorneys for Defendant  
GOOGLE INC.  
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**[] ORDER**

17 IT IS SO ORDERED.

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19 Dated: 4/2 \_\_\_\_\_, 2009

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*Ronald M. Whyte*  
HON. RONALD M. WHYTE  
UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF  
CALIFORNIA

**EXHIBIT J**

**Michael Storti**

---

**From:** David Silbert [DSilbert@KVN.com]  
**Sent:** Friday, May 08, 2009 10:12 AM  
**To:** Michael Storti  
**Subject:** Almeida v. Google  
**Follow Up Flag:** Follow up  
**Flag Status:** Completed  
**Attachments:** SFOEC04-Exchange-05082009-100008.pdf - Adobe Acrobat.pdf

Hi Michael:

I'm not sure if I sent this verification to you previously.

**David J. Silbert**  
Keker & Van Nest, LLP  
710 Sansome Street  
San Francisco, CA 94111  
(415) 391-5400  
dsilbert@kvn.com  
[www.kvn.com](http://www.kvn.com)

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**EXHIBIT K**

**Michael Storti**

---

**From:** David Silbert [DSilbert@KVN.com]  
**Sent:** Thursday, June 18, 2009 3:06 PM  
**To:** Michael Storti  
**Subject:** Dismissal

Michael:

We'll sign a stipulation to dismiss the *Almeida* litigation. Please forward one at your convenience.

Thanks.

**David J. Silbert**  
Keker & Van Nest, LLP  
710 Sansome Street  
San Francisco, CA 94111  
(415) 391-5400  
dsilbert@kvn.com  
www.kvn.com

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**EXHIBIT L**

**Michael Storti**

---

**From:** David Silbert [DSilbert@KVN.com]  
**Sent:** Thursday, August 13, 2009 9:52 AM  
**To:** Michael Storti  
**Subject:** FW: Almeida v. Google  
**Attachments:** Stipulation (KBK edits).DOC

Michael:

We agreed to waive costs, but we think the recitals need to stay in the stipulation. The attached version adds them back (and also deletes the erroneous comma in the first paragraph). If we can't agree on this, it's probably best that you file a motion, since we've been through several iterations at this point. I'm around today, so give me a call if you'd like to discuss.

Thanks.

---

**From:** Michael Storti [mailto:[ms@kbklawyers.com](mailto:ms@kbklawyers.com)]  
**Sent:** Tuesday, August 11, 2009 4:53 PM  
**To:** David Silbert  
**Subject:** RE: Almeida v. Google

David,

Attached are plaintiff's revisions to the stipulation. Let me know if these are acceptable.

Thanks,

Michael Storti  
Kabateck Brown Kellner LLP  
644 South Figueroa Street  
Los Angeles, CA 90017  
(213) 217-5000 (main)  
(213) 217-5013 (direct)  
(213) 217-5010 (fax)  
[www.kbklawyers.com](http://www.kbklawyers.com)  
[ms@kbklawyers.com](mailto:ms@kbklawyers.com)

---

**From:** David Silbert [mailto:[DSilbert@KVN.com](mailto:DSilbert@KVN.com)]  
**Sent:** Monday, August 10, 2009 3:01 PM  
**To:** Michael Storti  
**Subject:** Almeida v. Google

Hi Michael:

Here's a revised proposed stipulation, which I think you'll be happy with. If

so, you can sign for us and file. Give me a call if you'd like to discuss.

**David J. Silbert**

Keker & Van Nest, LLP  
710 Sansome Street  
San Francisco, CA 94111  
(415) 391-5400  
[dsilbert@kvn.com](mailto:dsilbert@kvn.com)  
[www.kvn.com](http://www.kvn.com)

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**EXHIBIT M**

**Michael Storti**

---

**From:** David Silbert [DSilbert@KVN.com]  
**Sent:** Wednesday, August 26, 2009 3:50 PM  
**To:** Michael Storti  
**Subject:** RE: Almeida v Google

Michael:

We've reviewed these cases, and they don't change our conclusion that the proper course here -- where Mr. Almeida never had standing -- is dismissal, as you previously agreed.

Thanks.

---

**From:** Michael Storti [mailto:[ms@kbklawyers.com](mailto:ms@kbklawyers.com)]  
**Sent:** Tuesday, August 25, 2009 5:34 PM  
**To:** David Silbert  
**Subject:** Almeida v Google

David,

The following cases support the argument that an amended complaint substituting a named plaintiff is appropriate as long as the amendment is not futile and otherwise satisfies the requirements of Rule 15.

*Griggs v. Pace American Group, Inc.*, 170 F.3d 877, 880 (9th Cir. 1999)  
*Palmer v. Stassinos*, 236 F.R.D. 460, 463 (N.D.Cal. 2006)

Please let me know if Google will stipulate to the filing of an amended complaint and continuing the case management deadlines.

Sincerely,

Michael Storti  
Kabateck Brown Kellner LLP  
644 South Figueroa Street  
Los Angeles, CA 90017  
(213) 217-5000 (main)  
(213) 217-5013 (direct)  
(213) 217-5010 (fax)  
[www.kbklawyers.com](http://www.kbklawyers.com)  
[ms@kbklawyers.com](mailto:ms@kbklawyers.com)

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